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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION,  
  
Debtor.

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

November 30, 2006  
10:33 AM

B E F O R E:  
  
HON. ROBERT D. DRAIN  
U.S. BANKRUPTCY JUDGE

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HEARING re Motion to Compel Assumption or Rejection of  
Unexpired Lease and for Payment and Performance of Post-  
Petition Lease Obligations

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HEARING re Motion to Compel

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HEARING re Objection to Motion Notice of Objection to  
Additional Extension of Deadline to Assume or Reject Unexpired  
Lease of Nonresidential Real Property with Orix Warren, LLC

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HEARING re Joint Motion to Amend Motion of Creditors/Interested  
Parties to Modify October 13, 2005 Order and to Compel Delphi  
Corporation to advance Legal Fees and Costs

15

16

HEARING re Joint Motion for Relief from Stay Motion for Limited  
Relief from the Automatic Stay, to the Extent Applicable, to  
Pay and/or Advance Defense Costs Under the Debtors' Insurance  
Policies

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HEARING re Objection to Claims

22

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HEARING re Third Omnibus Objection to Claims

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HEARING re Motion to Approve Motion for Order Pursuant to 11

1 U.S.C. Sections 502(b) and 502(c) and Federal Rules of  
2 Bankruptcy Procedures 2002(m), 3007, 7016, 7026, 9006, 9007 and  
3 9014 Establishing (I) Dates for Hearings Regarding Disallowance  
4 or Estimation of Claims and (II) Certain Notices and Procedures  
5 Governing Hearings Regarding Disallowance or Estimation of  
6 Claims

7  
8 HEARING re Motion to Compel Debtors to Submit Individual  
9 Employee Matter to Impartial Medical Authority

10  
11 HEARING re Motion to Authorize Motion for Order Under 11 U.S.C.  
12 Section 363(b) and Federal Rules of Bankruptcy Procedures 6004  
13 Authorizing Delphi Medical Systems Texas Corporation to Enter  
14 into Amendment to Manufacturing Agreement Terminating Supply  
15 Operations to its Sole Customer

16  
17 HEARING re Motion for Order to Authorize Entry into Settlement  
18 with the Securities and Exchange Commission

19  
20 HEARING re Kilroy Realty, L.P.'s Objection to the Debtors'  
21 Proposed Procedures Governing Hearings Regarding Disallowance  
22 or Estimation of Claims

23  
24 Transcribed by: Esther Accardi  
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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay. Delphi.

3 MR. BUTLER: Your Honor, good morning. Jack Butler,  
4 Kayalyn Marafioti and our colleagues here on behalf of Delphi  
5 Corporation for Delphi's thirteenth omnibus hearing. Your  
6 Honor, we have a filed a sixty-five page agenda for this  
7 hearing. And, with the Court's permission we would follow the  
8 agenda order.

9 THE COURT: Okay. That's fine.

10 MR. BUTLER: Your Honor, the first matters on the  
11 agenda, matters 1 through 3, the KESP Motion of docket number  
12 213. The creditors' committee's STN motion of docket number  
13 4718, the equity committee's ex parte motion to docket number  
14 5229. By agreement of the parties, both the emergence KESP and  
15 the STN matters are being adjourned until the new year, the  
16 January 11, 2007, hearing to allow continued framework  
17 discussions.

18 THE COURT: Okay. The way the recording system works  
19 is you have to turn your Blackberries off if you're near a  
20 microphone because it sets off the wireless recording system,  
21 gargles the transcript. Okay. You can go ahead.

22 MR. BUTLER: Your Honor, I'd like to deal with  
23 matters 4 through 7, which set forth the applications that were  
24 scheduled to be adjourned until the new year. And, matters 8  
25 through 35 which are fee application matters that are scheduled

1 for hearing today. The fee committee has filed two reports in  
2 connection with the fee matters and following the filing of the  
3 supplemental report there were discussions between some of the  
4 lead professionals in this case and the fee committee. And, it  
5 became evident that the fee committee has certain supplemental  
6 procedures that it would like to perform in connection with  
7 those applications. As one of the people involved in those  
8 discussions, Your Honor, and while the fee committee obviously  
9 operates independently from all the professionals in their  
10 own -- as appointee of this Court, it was self-evident Your  
11 Honor, to me, that those supplemental procedures are clearly in  
12 the best interest of the estate. So as the largest applicant  
13 in terms of the number of fees sought in this hearing, we  
14 certainly support the view of the fee committee, that those  
15 supplemental procedures be undertaken. And, have advised the  
16 parties, prior to Your Honor taking the bench, that the fee  
17 committee and the debtors are jointly requesting that these  
18 hearings be adjourned until February 15th of 2007, that's the  
19 February omnibus. That will allow the fee committee to  
20 directly communicate with each of the professionals on these  
21 matters and to conduct the supplemental procedures that the fee  
22 committee wants to undertake. It is also, I think likely, Your  
23 Honor that the fee committee will consult with counsel to the  
24 equity committee, creditors' committee and debtors and possibly  
25 submit, for Your Honor's consideration, a supplement to the

1 interim compensation procedures here to set out certain dates  
2 and procedures to make it very clear what the expectations of  
3 the committee are and what's necessary from a process  
4 perspective in order to allow this procedure to move forward.  
5 And, again, both our firm and Delphi Corporation, the debtors,  
6 support that approach. It is the recommendation for your  
7 consideration, Your Honor, if you're agreeable to this  
8 adjournment, that for any professional who is in agreement with  
9 the fee committee, after the these supplemental procedures have  
10 been performed, that an agreement with the recommendation of  
11 the fee committee of the Court, they would not need to appear  
12 at the February 15th hearing. We'd only have people appear who  
13 were not in agreement with the fee committee's recommendations  
14 and would want to address the Court if that's acceptable to the  
15 Court.

16 THE COURT: Okay. That's fine.

17 MR. BUTLER: And, then Your Honor, the last piece of  
18 this is what one does with holdbacks in this case. There are  
19 currently a ten percent holdback on the first and second fee  
20 applications. There is a twenty percent holdback on the third  
21 fee application, which ran through September 30th. That twenty  
22 percent holdback is accruing on the fourth fee application  
23 period, which covers the last three months of the year. And,  
24 so there are very significant dollars that have been held back  
25 from the professionals and there have been various levels of

1 requests on how that might be addressed. Our firm, by way of  
2 example, had asked the fee committee to consider reducing the  
3 amount of the holdback on the first and second fee application  
4 from ten percent to five percent, and to reduce the amount of  
5 the hold back on the third fee application from twenty percent  
6 to ten percent as they had done for the first two fee  
7 applications. Other professionals have suggested that the  
8 holdbacks be released all together. The invested banks who  
9 were before you because the nature of their engagement  
10 agreements essentially provided that the majority of the fees  
11 be paid at the end of the case, already believed they have a  
12 major holdback, and they have a holdback from their monthlies  
13 is something they believe is in some respects providing, from  
14 their view, a double penalty, if you want to view it that way.  
15 But a double holdback. A holdback towards the end of the case  
16 of their success fee and then a holdback on their monthlies.  
17 The fee committee has expressed no view on this request and  
18 makes no recommendation to the Court. So this matter is at  
19 issue in terms of what makes sense.

20 THE COURT: I thought they said they thought there  
21 should be a holdback.

22 MR. BUTLER: They did in their papers. They didn't  
23 express a view on this request that I just described to you.

24 THE COURT: Okay.

25 MR. BUTLER: We spoke with them prior to the hearing.

1 I think I was told to say on the record they expressed no view.

2 THE COURT: On the investment banker aspect of it.

3 MR. BUTLER: On this request.

4 THE COURT: Okay.

5 MR. BUTLER: And, part of the issue, Your Honor, I  
6 think here is it is November 30th, fiscal year ends are  
7 approaching for all the professionals who have fiscal year ends  
8 at the end of the calendar year. And, while clearly whatever  
9 the policies are that the Court wants to impose with respect to  
10 holdbacks ought to take precedence here and ought to control,  
11 there is a view that the amount of the holdbacks which is, all  
12 tolled, something approaching between -- I don't know the exact  
13 math, but its about ten million dollars on the first and second  
14 fee apps and its about another ten million on the third fee  
15 apps. So it's about twenty million dollars so far and it's  
16 accruing, it's probably close to thirty now, all tolled, that's  
17 being held back. And, the views have been expressed to the  
18 debtors, is given the solvency of this estate, there's no real  
19 question about the administrative solvency of this estate,  
20 certainly that's been raised by any party. And, given the  
21 progress that has been made in the case, that some release  
22 these holdbacks in connection with the fiscal year end would be  
23 appropriate. I know there are other professionals that want to  
24 address that. I believe I was authorized, on behalf of Delphi  
25 Corporation --

1 THE COURT: Well, I just procedurally have a  
2 question. If there's a request to adjourn the hearings, but  
3 I'm still being asked to release the holdbacks?

4 MR. BUTLER: You're being asked to address holdback  
5 issues generally here, Your Honor, with respect by the  
6 applicants. The decision on the -- and that would be -- in the  
7 context of a request for adjournment of the actual underlying  
8 fee application hearing, taking up, I think, the issue in the  
9 context of that adjournment, whether any review of the holdback  
10 seems to me to be certainly within the Court's purview if it  
11 chooses to address that. Because by virtue of this adjournment  
12 there will be another ninety-day delay in the consideration of  
13 these particular fee application.

14 THE COURT: Well, the procedures that you eluded to  
15 that the fee committee wants to go through as well as --  
16 someone else from the fee committee can answer this too. As  
17 well as the fact that the fee committee was still awaiting  
18 responses to its recommendations from most of the law firms and  
19 other professionals, is the area in dispute or in discussion,  
20 one that I can assume is within a five percent holdback range  
21 or a ten percent holdback range, or is greater than that in  
22 some instances. I mean, besides the solvency it's much harder,  
23 psychologically and sometimes legally, to get money back from  
24 someone than not. And, I think as far as the holdback issue is  
25 concerned, if there is a legitimate discussion going on with

1 various firms about whether their fees should be reduced, and  
2 the amount at issue is in excess of five or ten percent, I  
3 think I should know about that. Because that affects how I  
4 would consider the holdback issue.

5 MR. SHERBIN: Your Honor, David Sherbin, general  
6 counsel and chairman of the fee committee. I think, the answer  
7 is that in no single case is the recommendation by the fee  
8 committee in excess of five percent for any profession.

9 THE COURT: Okay. All right. Thank you.

10 MR. BUTLER: So, Your Honor, from the debtor's  
11 perspective, what I was authorized to say on behalf of the  
12 debtors, was to suggest that the third fee application, all the  
13 applications that are all being filed today, which have twenty  
14 percent holdbacks. That while those were under consideration,  
15 I think now in a March hearing, part of the relief that the fee  
16 committee is asking to be approved would be in this interim  
17 order that we send to you, the supplemental order, would be not  
18 to have a fee hearing on that until next March. Would be to  
19 reduce the holdback by half from twenty percent to ten percent.

20 THE COURT: I'm sorry, that's for what period?

21 MR. BUTLER: The third fee application period.

22 THE COURT: As well as going forward.

23 MR. BUTLER: No. The only recommendation from Delphi  
24 Corporation is for the third fee application which is discreet  
25 and those applications are being filed today.



1 THE COURT: Okay.

2 MR. BUTLER: To go from twenty percent to ten  
3 percent.

4 THE COURT: And, then there was a request from the  
5 applicants, some of the applicants, including our firm,  
6 frankly, that the holdback for the first and second fee  
7 applications be reduced from ten percent to five percent. And,  
8 I also put on the record the request that the debtors have  
9 received, with which the debtors agreed, with respect to the  
10 investment banks who have their success fees paid at the end,  
11 that they not be required to participate in the holdback on  
12 their monthlies.

13 THE COURT: Okay.

14 MR. BUTLER: I think there are other professionals  
15 who have different requests to make with respect to holdbacks.  
16 And, I believe the U.S. Trustee has a statement they want to  
17 make in connection with this as well.

18 THE COURT: Okay.

19 MS. LEONHARD: Good morning, Your Honor, Alicia  
20 Leonhard for the United States Trustee. First I'd like to say  
21 on behalf of the U.S. Trustee, that the U.S. Trustee opposes  
22 the release of any holdbacks. Twenty percent holdback is  
23 reasonable and fair and it's the policy of the Court, I  
24 believe, and also the U.S. Trustee to support that kind of  
25 holdback. And, it is early in the case. I think they are

1 making progress, but there are issues with respect to how the  
2 case will end. So, I believe that the twenty percent holdback  
3 is viable, should be remained in place. May I have one moment  
4 to talk on behalf of the fee committee. The fee committee has  
5 authorized me to state that the fee committee looked at --  
6 reviewed these applications, all of these applications and  
7 looked at the criteria. We established quantifiable criteria  
8 to review these fee applications. And, in listening to the  
9 Court and heeding the Court's advice we used a reasonable  
10 business approach. However, we do need to supplement these --  
11 as you can see from our report we do need to supplement our  
12 procedures. And, so in the spirit of cooperation and in the  
13 exercise of our fiduciary duty to the estate, we agree to this  
14 adjournment and to cooperate with the parties to create a  
15 process that will be satisfactory to all of us. We would also  
16 welcome, you know, if the Court has any input with respect to  
17 any meaningful enhancements. But we will be working with  
18 everybody on this issue and come back before the Court in  
19 February.

20 THE COURT: Okay. Well, obviously I haven't heard  
21 from the professionals. Again, if you have a Blackberry on and  
22 you're near a microphone, you should turn it off, because  
23 that's why you're hearing that buzzing sound. The first part  
24 of your report has general recommendations, all of those made  
25 eminent sense to me. So subject to hearing some professionals

1 say one of those doesn't for some reason, and it's hard for me  
2 to imagine how they would, all of those recommendations seem  
3 reasonable to me and would be something that, you know, a  
4 general counsel hiring a lawyer or an investment banker, as  
5 appropriate, when it would demand. So I'm glad you laid those  
6 out, in case there's any issue about them, that's how I feel  
7 about them.

8 MS. LEONHARD: Yes, thank you, Your Honor.

9 THE COURT: Okay.

10 MS. LEONHARD: Okay. I have nothing further, Your  
11 Honor, unless you have questions.

12 THE COURT: Okay.

13 MS. LEONHARD: I will state that the U.S. Trustee --  
14 one more thing on behalf of the U.S. Trustee -- I'm sorry, I  
15 keep switching hats this morning. The U.S. Trustee has  
16 reviewed these fee applications in her individual capacity  
17 pursuant to her statutory duty under 28 U.S.C. Section 586, and  
18 the U.S. Trustee will continue to review these fee applications  
19 going forward and will most likely be filing statements and  
20 objections of her own.

21 THE COURT: Okay.

22 MS. LEONHARD: From now on. Thank you very much.

23 THE COURT: Fine.

24 MR. ROSENBERG: Your Honor, we are, of course, happy  
25 to work with the fee committee to see whether the procedures

1 can and should be modified or approved in some way. And, to  
2 that extent, certainly do not object to an adjournment of the  
3 first and second fee hearings until February. However, Ms.  
4 Leonhard and even Mr. Butler would put a very, very substantial  
5 cost upon the professionals in doing that. In some cases, Your  
6 Honor, fees are heard reasonably shortly after the fee period.  
7 That has not been the case here for whatever reason, nobody's  
8 fault, it's huge, it's complicated, it took a long time to get  
9 organized, it's still not quite organized, it needs  
10 modification. Understood, no problem, nobody's to blame for  
11 that. However, let's not lose sight of the fact that we are  
12 talking about a hearing next February, year and a half into the  
13 case, fee applications for the first seven and a half months of  
14 the case.

15 THE COURT: But in terms of their out of pocket  
16 costs, and this is why I asked my question of Mr. Butler, all  
17 of those issues are being heard now. The only issue is on an  
18 interim basis, whether someone would have to disgorge payments  
19 that I decided they could receive on the holdback.

20 MR. ROSENBERG: Yes.

21 THE COURT: Of course, since there's interim fees  
22 anyway, that issue hangs over what the professionals had until  
23 the end of the case.

24 MR. ROSENBERG: That's certainly correct, Your Honor.  
25 And, actually, that supports my proposition, which is that

1 every one of these professionals are ongoing for the course of  
2 the case. And, therefore, to the extent that there are any  
3 issues in retrospect with payments already approved, when  
4 finally approved down the line, as of the moment we are  
5 talking, even assuming that there is a hearing on the third fee  
6 application in March. We will be having seven months at that  
7 juncture of additional holdbacks at twenty percent. That's a  
8 huge, huge holdback out of which to take. You know, any  
9 retribution, if you will, if retribution needs to be made. You  
10 don't need, and it's unfair to the professionals, given the  
11 size of these cases and the length of delay here to hold back  
12 from day one, even if there's a dispute in that first three  
13 months. There is so much holdback here just based upon the  
14 delay of a minimum of eight months delay. Twenty percent over  
15 eight months, out of which to fix every conceivable problem.  
16 That's just not fair to the professionals to have more than  
17 that. And, again, Your Honor, as I understand the law, the two  
18 reasons for holdbacks are the potential of an estate being  
19 administratively insolvent, inconceivable here and to goad the  
20 professionals into acting quickly and efficiently.

21 THE COURT: Well, it's also to make sure that there's  
22 some reasonable -- no one likes to have professionals give the  
23 money back.

24 MR. ROSENBERG: I agree, Your Honor. And, if we  
25 we're talking about payment every three months and no leeway

1 you'd be right. But that's what I'm trying to point out.

2 THE COURT: Okay.

3 MR. ROSENBERG: Even if the three period holdbacks  
4 were paid in full, Your Honor would have eight months of  
5 holdbacks, assuming there's no further delay in the process out  
6 of which to worry about that issue.

7 THE COURT: Okay.

8 MR. ROSENBERG: Thank you.

9 MR. BUTLER: Your Honor, if I could respond on behalf  
10 of the estate. Because I do want the record to be clear about  
11 what Delphi's recommendations are as opposed to what Skadden's  
12 may be or someone else's view may be. Delphi Corporation  
13 actually continues to agree with the views of the United States  
14 Trustee, that there should be some continuing holdback with  
15 respect to all of the fee applications until the end of the  
16 case. The question is what is reasonable under the  
17 circumstances. And, the two areas in which Delphi Corporation  
18 and the related debtors make recommendations to the Court are,  
19 that with respect to the third fee application, because it is  
20 year end, because those applications cover periods ending  
21 September 30th and those fee hearings won't occur until next  
22 March. The Delphi Corporation and related debtors would  
23 recommend to the Court that the fees be cut -- the holdback be  
24 reduced from twenty percent to ten percent. Also with respect  
25 to the investment banking, 327(a), 328(a) type of retentions,

1 Delphi Corporation would not oppose those professionals not  
2 having to hold back their monthlies, given the fact their  
3 success fees are paid at the end of the case. And, that's the  
4 extent of Delphi Corporations recommendations to the Court.  
5 Sitting here now as an applicant, Skadden, we continue to  
6 believe, in light of the fee committee statement that no  
7 applicant is facing recommendations of more than a five percent  
8 reduction in their fees for the first and second fee  
9 application period. And, given the fact that its year end, it  
10 certainly would be nice and would not appear to prejudice the  
11 estate if the holdbacks for the first and second fee  
12 applications were reduced from ten percent to five percent.  
13 And, that's the other perspective, Your Honor.

14 THE COURT: Okay. Anyone else?

15 MS. GRETCHKO: Good mourning, Your Honor. My name is  
16 Lisa Gretchko from Howard & Howard Attorneys, PC in Bloomfield  
17 Oak, Michigan. My firm has the pleasure of being special  
18 counsel to the debtors for their general intellectual property  
19 work. We do patent persecutions, mostly for steering devices.  
20 We also handle trade and copyright matters. Your Honor, I am  
21 here on the holdback issue because I respectfully submit that  
22 the holdback isn't appropriate when applied to my firm. Let me  
23 give you a general idea of the blended rate that we're giving  
24 to the debtors. On our first fee application the blended rate  
25 was 266 dollars. On the second fee application it dropped to

1 168 and on -- I'm sorry, the first fee application was 228, the  
2 second fee application blended rate is 166 and on the third it  
3 would drop to 148 dollars.

4 THE COURT: Has you firm taken a rate reduction from  
5 what it normally charges its clients.

6 MS. GRETCHKO: When we are given a project by the  
7 debtor we are told it has a not to exceed price.

8 THE COURT: Is that different then what it normally  
9 does with its clients.

10 MS. GRETCHKO: It's our standard behavior with this  
11 client, but the not to exceed price results in a rate reduction  
12 for us. That's number 1. Number 2 is unlike other counsel in  
13 a case we were not permitted to charge a retainer at the  
14 beginning of the case. I noticed that other firms, including  
15 Mr. Butler's law firm, charged a very nice, quite significant  
16 retainer, my firm had the antithesis of a retainer, we were  
17 left with a 234 thousand dollar unpaid pre-petition claim,  
18 which we've since sold at a discount. When we got into this  
19 case, Your Honor, we were never told of the duration of the  
20 holdback into the conclusion of the cases. And, respectfully,  
21 Your Honor, that's too harsh, especially when we are delivering  
22 services at such lien hourly billing rates. And, let me put  
23 that in perspective for you. I've been practicing law -- I'm  
24 52, I've been practicing since 1979, which is twenty-seven  
25 years. My current hourly billing rate is 325 dollars. Based



1 on what I saw in the fee applications of others, the Skadden  
2 law firm charges 325 dollars, actually a few dollars more, for  
3 a lawyer who was admitted to practice earlier this year. We  
4 are providing the most efficient services, it's our pleasure to  
5 do. We are trying to help the debtor through the  
6 reorganization process. But, Your Honor, a twenty percent  
7 holdback is harsh on us, there is no cushion in our hourly  
8 rates to absorb a twenty percent holdback. Our first fee  
9 application was filed last April, months ago. We're now filing  
10 the third fee application, today, and we're talking about a  
11 hearing in March. That would be eleven months after the first  
12 fee application was filed and a year and a half into the case.  
13 I echo Mr. Rosenberg's comments that -- especially in light of  
14 Mr. Sherbin's comment, if the largest targeted amount won't  
15 exceed five percent of any fee application then there's not  
16 need to continue the rolling holdback. And, I think that's the  
17 gist of what Mr. Rosenberg was trying to say. With respect to  
18 my law firm, which frankly in my impression, should have been  
19 able to come in as an ordinary course professional and the  
20 debtors tried. Mr. Butler's firm tried very hard to get us in  
21 as an ordinary course professional. But the U.S. Trustee set  
22 the threshold quite low. And, because the 500 thousand dollar  
23 threshold ran again to the conclusion of the case, and no one  
24 would know when that would be, we had no choice but to be  
25 retained as 327(e) counsel. But, Your Honor, it's harsh. And,

1 I respectfully ask that as to my firm, that there be no  
2 holdback imposed. Mr. Butler was willing to step aside for the  
3 investment bankers because they viewed it as a penalty. Your  
4 Honor, we are doing business as normal with Delphi, we're  
5 giving them excellent service at outstandingly good rates.  
6 And, its too harsh on us, we can't absorb a holdback and I ask  
7 that it not be applied to our firm. If the Court, in its  
8 wisdom, decides that a holdback is still necessary for my firm  
9 then I ask that it be the smallest possible amount for the  
10 shortest possible duration. I was here today, Your Honor,  
11 prepared to argue the balance of our fee applications and  
12 support them in total. If you're going to adjourn that, I  
13 suppose, I don't want to fight City Hall on that. But  
14 especially in light of that adjournment, Your Honor, I ask that  
15 there be no holdback. And, that all of the fees requested in  
16 my first and second interim applications be allowed and paid at  
17 this time. And, that there also be no holdback applied to my  
18 firm going forward. Thank you very much, Your honor.

19 THE COURT: Okay. All right. I'm sorry.

20 MS. CRONIN: Thank you, Your Honor. I'll be brief.

21 Maureen Cronin from Debevoise & Plimpton on behalf of  
22 Rothschild Inc. Mr. Butler, I think, has already advanced the  
23 position of Rothschild that the twenty percent holdback should  
24 not be applicable to Rothschild given the substantial --

25 THE COURT: I'm convinced. I'm convinced, you don't

1 need to convince me more.

2 MS. CRONIN: Thank you very much.

3 THE COURT: Thanks. All right. These are all  
4 interim fee applications. And, Mr. Rosenberg, I think, aptly  
5 summarized the dynamics in connection with holdbacks in regard  
6 to interim fee applications. It is the one wrinkle in what  
7 otherwise Congress determined to govern fees in bankruptcy  
8 cases, which is that professionals should be compensated as  
9 they would be outside of bankruptcy. That is, the parties in  
10 interest in this case, not only the U.S. Trustee and the debtor  
11 and other parties of interest, but the fee committee, have the  
12 right to look at fee applications as were a client of a  
13 professional outside of bankruptcy, and as for the same level  
14 of detail, the same type of performance and seek the same types  
15 of discounts that are appropriate outside of bankruptcy. And,  
16 theoretically also be willing to pay the same types of  
17 enhancements. Because it's a collective process, professionals  
18 have to describe their fees in detail and submit time records  
19 in more detail than some clients require. But they're  
20 compensated for doing that. And, ultimately, if the parties  
21 don't object, the Court still reviews applications and will  
22 object. The wrinkle is that unlike most private engagements,  
23 the professionals are not done and not through the review  
24 process in respect to their fees until the end of the case.  
25 And, what they have before then is interim compensation. And,

1 to protect the estate, and also to some extent the  
2 professional, it's common to have holdbacks during the case to  
3 the interim compensation. Here I am not concerned. And, I  
4 know many of you are not privy to this but many of you are.  
5 One of the reasons I'm not concerned is the number of  
6 conferences that I've held with various parties in interest in  
7 the case over the last few months. I'm not concerned in light  
8 of that and the case generally that this case is veering off on  
9 a path that would require significant holdbacks percentage  
10 wise, just because of the conduct of the case. Nor am I  
11 concerned that the case is administratively insolvent. So  
12 really my focus on the holdbacks goes to what would be a  
13 reasonable deduction from fees knowing that fee applications  
14 are not particularly heavily contested on an interim basis.  
15 And, also knowing that the fee committee is still engaged in  
16 its review of the negotiation process with the firms. Mr.  
17 Rosenberg is right, the fees that are held back here are in a  
18 large amount. And, that does, in some measure, given the  
19 amount that might be at issue here, based on my own review as  
20 well as the fee committee's review, present a hardship to  
21 various firms. So in light of all that, I will amend the prior  
22 order entered in the case awarding previous interim  
23 compensation and require that only five percent of that  
24 previous awarded interim compensation be held back from the  
25 professionals. With regard to the current application, the one

1 that's being adjourned, the third period, I'll require -- the  
2 debtors will be authorized under the existing fee order to pay  
3 ten percent of the holdback to the professionals. And, in both  
4 respects that is subject to the following qualifications.  
5 First, investment banks and other advisors, whose compensation  
6 is primarily based on a success fee or a result fee that will  
7 only occur in the future, need not have any further holdback  
8 for the last three periods. Secondly, with regard to this  
9 period, the third period, any professional that has agreed with  
10 the fee committee and has already made a reduction in their  
11 requested fees, and I believe there were about three or four  
12 listed -- two? I'm sorry, for the first and second periods,  
13 will not have any holdback as to those periods. I hope that's  
14 clear. If anyone has any questions, I'll go over it again.

15 MR. BUTLER: Your Honor, can I just play it back to  
16 make sure I have it written down right for the order?

17 THE COURT: Okay.

18 MR. BUTLER: For the first and second fee  
19 applications, the holdback will be reduced from ten percent to  
20 five percent. For the third fee application they would be  
21 reduced from twenty percent to ten percent. For the fourth  
22 period, which we're still in the middle of and going forward,  
23 it would remain at twenty percent until further order of the  
24 Court. With respect to anyone who settles with the fee  
25 committee on filed applications, subject to the settlement they

1 reach with the fee committee, the remaining holdback could be  
2 released.

3 THE COURT: As to the first three periods.

4 MR. BUTLER: As to the first three periods. And,  
5 investments bankers, which I think are the only ones in this  
6 case it has to come back in its success fees, but anyone who  
7 has a 328 application, where the substantial amount of their  
8 fee is earned at the end of the case through that process, they  
9 would not be subject to the holdback requirement.

10 THE COURT: As far as the first three periods. The  
11 fee order should remain in place for them on -- you know,  
12 subject to quarterly applications.

13 MR. BUTLER: I think I understand.

14 MS. LEONHARD: Excuse me, Your Honor. Alicia  
15 Leonhard, for the U.S. Trustee. To qualify that, the fee  
16 committee came into agreement with several parties listed on  
17 the report with respect to the first and second fee periods  
18 only.

19 THE COURT: Right. But I'm saying, if you do agree  
20 on the third before the adjournment, you should tell me and  
21 that will affect my view on the holdback.

22 MS. LEONHARD: Wonderful. Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. BUTLER: So as I understand it, as the fee  
25 committee reaches settlements it can release the holdbacks

1 subject to this order if the fee committees settles.

2 THE COURT: Yes, correct.

3 MR. BUTLER: Got it. I think I have it, Your Honor,  
4 and we will submit an order to chambers.

5 THE COURT: Okay.

6 MS. GRETCHKO: Your Honor, may I ask one question?

7 THE COURT: Yes.

8 MS. GRETCHKO: I apologize. Is there any time frame  
9 for the fee committee to converse with counsel? We would --

10 THE COURT: Well, their report said that they sent  
11 out proposals to everybody.

12 MS. GRETCHKO: Well, we've heard nothing.

13 THE COURT: Well, they'll pick up their phone. I'm  
14 sure they'll answer your call.

15 MR. BUTLER: Thank you, Your Honor. Can we just take  
16 a break for those people who are here just for fee apps so they  
17 can be excused?

18 THE COURT: Yes. Absolutely. And, of course, just  
19 to reiterate, if your fee application is unopposed you need not  
20 attend the adjourned hearing.

21 MR. BUTLER: Your Honor, we'll put that in the order  
22 and the notice.

23 THE COURT: Okay. Was it just them, no one else on?  
24 Is anyone else on the phone at this point or have you all hung  
25 up.

1 MR. TAGGERT: I'm on the phone. Lee Taggert from  
2 (indiscernible - due to static on phone line) in Bloomfield  
3 Oaks, Michigan.

4 THE COURT: So you're on the phone for a different  
5 matter?

6 MR. TAGGERT: No. I was on for the fee application.  
7 Well, because of the audio quality we're going to turn off the  
8 phone. Unless there's someone on who wants to participate in  
9 another hearing.

10 MS. RIVERAS: Your Honor, Elizabeth Riveras for  
11 (indiscernible - due to static on phone line) matters.

12 THE COURT: Oh, there is. Never mind then.

13 MR. MASTROMARCO: Vincent Mastromarco, Your Honor.

14 THE COURT: That's fine. I just want to remind you  
15 all to keep your phones, though, on mute unless you're going to  
16 speak. Okay. Go ahead, Mr. Butler.

17 MR. BUTLER: Your Honor, the next matter on the  
18 agenda -- can we continue with the hearing please. The next  
19 matter on the agenda is matter number 36. Your Honor, this is  
20 Orix Warren LLC's objection to additional extension of  
21 deadline. I expect the non-residential properly release, is at  
22 docket number 5178. Essentially, Your Honor, when Your Honor  
23 dealt with the 365(d)(4) deadline back last year, extended it  
24 to June 7, 2007, pursuant to a motion we filed and we dealt  
25 with last year, the Orix Warren landlord issue was dealt with



1 in an order that was entered at a hearing held just about a  
2 year ago today. And, they had the ability, unlike anyone else,  
3 they had the ability to file an objection at a prescribed time  
4 during 2006. And, essentially bring 365(d)(4) back to the  
5 Court as to their lease with the burden of proof being on the  
6 debtors. They filed that objection, that brought that matter  
7 at issue today, for evidentiary hearing. And, as we went  
8 through the discovery process and other processes in preparing  
9 for this hearing, including meet and confers with Orix Warren,  
10 they have concluded that they did not want to proceed with that  
11 evidentiary hearing. And, instead were prepared to withdraw  
12 their objection which they had done, and it's been noted on the  
13 record. And, they have agreed that the 365(d)(4) extension to  
14 June 7, 2007, will be applicable to them subject to the  
15 debtor's right to seek a further extension beyond that date,  
16 and their right to move to shorten the deadline for cause where  
17 they're going to have the burden.

18 THE COURT: Okay.

19 MR. BUTLER: And, Your Honor, we're going to submit  
20 an order to chambers on that point. Because when you read the  
21 earlier order it's at least ambiguous as to whether or not once  
22 they filed the objection it triggered the mechanism whether one  
23 can untrigger that mechanism.

24 THE COURT: Okay, that's fine.

25 MR. BUTLER: We're going to submit an order to

1 clarify that. That's matter number 36. Matter number 37, Your  
2 Honor, is Delphi Medical Systems Texas Corporation's motion to  
3 deal with an amendment to a manufacturing agreement that would  
4 terminate supply operations to a customer. In fact, it's sole  
5 customer. And, this is docket number 5517. Your Honor, this  
6 deals with a 2005 agreement in which Delphi Medical Systems  
7 Texas Corporation agreed that DMT, the debtor will be the sole  
8 supplier to a particular customer. The customer's name, by the  
9 way, for the record, is Appalera Corporation, A-P-P-A-L-E-R-A.  
10 And, that this was in many respects, worked out to deal with  
11 that customers issues and to sort through a transition with  
12 them. And, as it turned out, the operations under that  
13 arrangements since 2005, have not been profitable. The company  
14 has lost several million dollars per year, with respect to  
15 that. And, had concluded as part of its transformation work  
16 that it needed to wind down that operation to provide for the  
17 losses. The customer, as happens in this business, when  
18 they're the sole supplier and our sole customer in this  
19 particular part of the operations, wanted to make sure that  
20 this was done on an orderly basis. And, agreed to provide  
21 additional money to the company to induce us to go forward with  
22 them for a period of time. So what this amendment involves is  
23 a transition agreement to facilitate the closure of the Texas  
24 facility where these operations occur, and to assure a smooth  
25 transition resourcing the products and services that we had

1 been providing. Essentially, Your Honor, as the motion papers  
2 indicate, there's a benefit of about 9.7 million dollars  
3 through pricing increases, inventory liquidation and success  
4 fee, and a reduction in operating losses. There's arguably  
5 additional benefits because if we rejected these arrangements  
6 there would be a claim against the estate for a couple of  
7 million dollars.

8 THE COURT: Which is waived.

9 MR. BUTLER: Which will be waived under this deal.  
10 And, there will be some costs here, about 350 thousand dollars  
11 in costs, including the payment of lease expenses and a net  
12 severance expenses consistent with the company's ordinary  
13 course policies. In fact, I think, a little bit less generous  
14 than our normal policies. And, we have reviewed this matter, I  
15 believe, with the creditors' committee. No objections have  
16 been filed by any party. And, I'd like Your Honor's authority  
17 to consummate this amendment.

18 THE COURT: Okay. Well, it's granted. It's clearly  
19 good business judgment and so you can submit that order at the  
20 end of the hearing.

21 MR. BUTLER: Thank you, Your Honor. Your Honor, next  
22 matter on the agenda is matter 38. This is our SEC settlement  
23 motion, found at docket number 5520. The only response was a  
24 statement not an objection from the official committee of  
25 equity security holders at docket number 5749. Your Honor, on

1 October 30th of this year, the United States District Court for  
2 the Eastern District -- in the United States District Court,  
3 for the Eastern District of Michigan, the Securities and  
4 Exchange Commission commenced and simultaneously settled with  
5 Delphi. A lawsuit that alleged violations of federal security  
6 laws relating to transactions that were the subject of Delphi's  
7 June 2005 financial restatement. On November 7th of this year,  
8 the Honorable Abraham Cohen entered the final judgment as  
9 Delphi Corporation. The final judgment memorialized the  
10 settlement with the SEC. In the papers we filed today, and  
11 including a proposed order for Your Honor's consideration,  
12 we've attached a copy of that final judgment entered in the  
13 district court which is subject to the approval of this Court.  
14 Pursuant to the terms of Delphi's settlement with the SEC in  
15 the final judgment Delphi agreed, without admitting or denying  
16 any wrongdoing, to be enjoined from future violations of the  
17 security laws under various provisions of those statutes. I  
18 also want to report to Your Honor, that you impart Delphi's  
19 cooperation with the SEC throughout its investigation. The SEC  
20 did not seek civil monetary penalties against Delphi  
21 Corporation in connection with the settlement of this  
22 litigation. It is important for us to outline to the Court, as  
23 we have in our papers and to our stake holders, that there are  
24 collateral implications resulting from consenting to the entry  
25 of the final judgment in this case. For example, Delphi would

1 be subject to contempt should it violate the terms of the  
2 injunction. Absent rendered a relief from the Securities and  
3 Exchange commission, entry of the final judgment renders  
4 inapplicable for a three-year period. The protection to the  
5 Safe Harbor for forward looking statements under the Federal  
6 Securities laws and the SEC has not given any relief with  
7 respect to that matter. And, the final judgment may well have  
8 the effect of requiring Delphi to meet more stringent  
9 disclosure or other reporting obligations for the future  
10 issuances of securities. And, other matters are described in  
11 our papers that we've filed. Your Honor, this settlement is a  
12 product of many, many, many hours. First, investigation and  
13 shared investigation with the Securities and Exchange  
14 Commission, and independent counsel that were hired by Delphi  
15 Corporation for the audit committee of the board of directors  
16 who conducted this investigation. And, then discussion and  
17 negotiations between the staff of the SEC and representatives of  
18 the debtors, including the debtors including the debtor's audit  
19 committee counsel Wilmer, Cutler, Pitrene & Hale, and Halendor  
20 and members of the audit committee. The audit committee  
21 members by the virtue of our bylaws includes our lead director  
22 as an beneficent member, and Mr. John Opie is in the courtroom  
23 today. I'd like him to stand and be introduced to you. And,  
24 he's our lead independent director. And, he participated in  
25 weekly calls on this matter for a very extended period of time

1 while this work was undertaken, and is intimately familiar with  
2 both, the underlying investigation and with the settlement that  
3 has been agreed to with the commission. Your Honor, Delphi did  
4 fully cooperate with the SEC throughout this investigation and  
5 separately and is previously disclosed in public filings, the  
6 debtors are cooperating with the Department of Justice in a  
7 parallel investigation. We are, Your Honor, as you would  
8 expect us to be, pleased with this investigation by the SEC and  
9 this controversy has been resolved and settled. And, we  
10 consider this settlement to be an important step in our  
11 transformation process. The debtors believe that this  
12 settlement is reasonable and is in the best interest of their  
13 estate and stake holders and request that this settlement be  
14 approved and the form of the order, which we have reviewed, and  
15 has been approved by staff of the SEC, be entered by Your  
16 Honor. Your Honor, I have Mr. Opie here for any testimony. In  
17 the absence of any objection of the proffer is necessary, but  
18 he's here to answer any questions the Court may have and I know  
19 the equity committee may want to address this.

20 MS. STEINGART: Well, Your Honor, I think that the  
21 statement speaks for itself. We don't believe that any aspect  
22 of the consent decree as it's drafted is -- this is Bonnie  
23 Steingart on behalf of the equity committee. So we don't think  
24 that the consent decree in the forms that its been entered into  
25 in any way impinges on the reservations that we thought

1 important to have on the record. So it was a statement not an  
2 objection. And, as we also said, we are glad that the debtor  
3 has resolved this and we support the debtor's entry into this  
4 agreement. Thank you.

5 THE COURT: Okay. I think, my only question is do  
6 the debtors have in place procedures to deal with the  
7 additional reporting and other requirements of this decree.

8 MR. BUTLER: Your Honor, we do have work that's being  
9 done by our audit committee and by the management of the  
10 company on a regular basis. We have Mr. Sherbin, who  
11 identified himself to you not only as our general counsel, as  
12 chairman as the fee committee, he's also the company's chief  
13 compliance officer. And, there is a series of compliance  
14 procedures being put in place at the company. The company  
15 takes this issue very seriously. And, it's obligations under  
16 the consent decree very seriously. And, expects to be able to  
17 perform all of its obligations as we have worked them out with  
18 the commission.

19 THE COURT: Okay. All right, as with the last motion  
20 there was no objections. And, that's understandable because  
21 this is a settlement that's clearly in the best interest of the  
22 debtors and is fair and equitable to the debtor's stakeholders.  
23 So I'll approve it.

24 MR. BUTLER: Thank you, Your Honor. Your Honor, the  
25 next matter on the agenda is matter number 39. This is a

1 motion of certain creditors and interested parties to modify a  
2 first day order entered on October 13, 2005. And, it compelled  
3 Delphi Corporation to advance legal fees and costs. It's got a  
4 docket number 5354. Objections have been filed both by the  
5 equity committee and the debtors. We'll cede the podium the  
6 movant's counsel to present the motion and then to, I think,  
7 Ms. Steingart on behalf of the equity committee to present  
8 their objection.

9 MR. LUND: Good morning, Your Honor. Matthew Lund, I  
10 am counsel for Paul Fried who is one of the movants and I'll be  
11 the primary, if not the only speaker on behalf of all of the  
12 movants today. With limited exception of issues of common  
13 interest. As the Court's aware from the prior motion, and I'm  
14 sure from other meetings, there has been a long investigation  
15 by the SEC and the Department of Justice relating to Delphi's  
16 financial reporting and accounting treatment for certain  
17 transactions. There has also been a number of class action  
18 lawsuits. All of these investigations and lawsuits relate to a  
19 handful of transactions, some of which were the subject of  
20 Delphi's restatement of its financial reports. The movants  
21 this morning are former employees and officers of Delphi that  
22 have incurred substantial costs as a result of these  
23 investigations and/or lawsuits. And, prior to the filing of  
24 the bankruptcy, Delphi, in accordance with its bylaws, was  
25 advancing defense costs to these former employees. The bylaws



1 required advancement of Delphi with the sole free condition  
2 being the proffering of an undertaking by the employees and  
3 former employees, which was done. When the bankruptcy was  
4 filed the advancement ceased, immediately as to many of the  
5 movants and eventually as to all of the movants. In the first  
6 day motions that Delphi filed, one of the motions sought this  
7 Court's authority to advance defense costs to a pool of current  
8 and former employees. Fifty employees, nineteen of which at  
9 the time, were former employees. And, as to the current  
10 employees, Delphi sought restrictions on --

11 THE COURT: I'm sorry, apparently somebody has a very  
12 powerful Blackberry. You're sitting away from the microphone.  
13 I'm going to have to ask you all to turn them off. I know  
14 that's like taking away an oxygen supply, but it's wreaking  
15 havoc with the microphone. Sorry.

16 MR. LUND: As to the then current employees, the  
17 request for advancement in the first day motion didn't impose  
18 any restrictions. The request as to the then, former  
19 employees, sought the Court's permission to advance, subject to  
20 a discretion by Delphi, on a case-by-case basis as to whom it  
21 will and will not advance fees to, which is contrary to  
22 Delphi's bylaws and subject to a five million dollar cap, which  
23 is also not a part of the bylaws. This request was granted in  
24 the Human Capital Obligations order and the Court gave Delphi  
25 this authority and discretion. And, subsequent with that

1 discretion, Delphi declined to advance these to those employees  
2 that were alleged to have played a role in the transactions  
3 that are the subject of the governmental investigations and  
4 Delphi's restatement. And, the thrust of our motion today,  
5 Your Honor, is to ask that the Human Capital Obligations order  
6 be modified to require Delphi to advance fees in a manner that  
7 is done under a proper and fair framework that is the bylaws,  
8 and a manner that does not favor some employees at the expense  
9 of others. Let me make one point clear, having read the two  
10 objections that were filed. We are not contending that our  
11 pre-petition right to advancement survived the automatic stay.  
12 Both objections went to some lengths to make that point and  
13 that is not the premise of our motion. What we're saying is  
14 that the authority that this Court granted in the Human Capital  
15 Obligations order post-petition should have been granted and  
16 should be exercised in a manner that is, first of all, fair and  
17 a manner that treats likely situated creditors alike, and a  
18 manner that is consistent with the bylaws. And, as I've said,  
19 the only prerequisite to advancement under the bylaws pre-  
20 petition and post-petition is the proffering of an undertaking  
21 which has been done. There, as I said, there was a framework  
22 in place and that is the bylaws, the bylaws survived the  
23 petition, and unchanged substantively as pertinent to this  
24 motion. The bylaws were drafted in favor of the strong public  
25 policy favoring advancement. It is not consistent with that

1 strong public policy to give the company unfettered discretion  
2 to make judgments about former employees that favor some and  
3 disfavor others. Let me make a very brief word about our  
4 constitutional argument that we set forth with regard to the  
5 Stein case from earlier this year. This discretion that was  
6 granted by the Human Capital Obligations order to pick and  
7 choose necessarily exposed, or at least exposed Delphi to  
8 pressures to decline advancement to certain employees as a  
9 means of showing cooperation with the investigative  
10 governmental agencies. And, this is a circumstance that has  
11 been held in this district in the Stein case to infringe on any  
12 individuals to process rights. I read Mr. Opie's declaration,  
13 and do I have evidence that statements were made by the  
14 government to pressure Delphi to cut these employees off, no I  
15 don't. I read it, I take him at his word, but I'd ask you to  
16 consider the strong, I guess, circumstantial evidence of the  
17 exposure here that could not be ignored by the compensation  
18 committee in making these decisions. Both Mr. Opie's  
19 declaration and the letter we appended as Exhibit E to our  
20 papers clearly states that the employees that were cut off were  
21 the employees that played a role in the transactions at issue.  
22 And, the subsequent employees that were cut off were those that  
23 received wells notices. Delphi subsequently has settled with  
24 the SEC without any monetary penalty and has publicly stated  
25 its commitment to cooperate. As Judge Kaplan said, there are a

1 few defense lawyers that would freely advise a corporation at  
2 risk of indictment to feel free to advance. And, whether or  
3 not, there were constitutional implications here, my motion  
4 doesn't rise or fall on that. At the end of the day what we're  
5 asking is simply that the advancement going forward, pursuant  
6 to this post-petition order, be done in a fair and equitable  
7 manner. And, before I sit down there are two arguments that  
8 were made by the equity security holders that I want to  
9 address. One relates to individual movant, Laura Marian,  
10 arguing that the doctrine of unclean hands bars advancement to  
11 her because of her settlement with the SEC. I don't represent  
12 Ms. Marian, but I think if the Court looks at the first page of  
13 the settlement document that was appended to the papers, the  
14 first page says it's a neither admit nor deny. And, a neither  
15 admit nor deny is certainly not a showing of unclean hands.  
16 And, then in the last objection that the equity security  
17 holders make is the idea of indemnification is contingent and  
18 should be disallowed as a contingent playing because there's a  
19 good faith finding that is required. And, that objection is  
20 easily resolved because it just confuses the concept of  
21 indemnification with advancement. The bylaws and Delaware law  
22 are clear that decisions about good faith that impact  
23 indemnification are made at the indemnification stage and not  
24 at the advancement stage, advancement is mandatory. So Judge,  
25 we're not asking for any special survival of a pre-petition

1 right, all we're asking that the prior order be modified to  
2 lift the cap that is not part of the bylaws and to require  
3 Delphi to advance these, consistent with its bylaws, which  
4 requires only the proffering of an undertaking and that full  
5 advancement be given to these former employees who relied on  
6 this right.

7 THE COURT: All right. These employees didn't incur  
8 these costs in connection with criminal indictment or criminal  
9 defense.

10 MR. LUND: There has not been any indictment to date.

11 THE COURT: Okay.

12 MR. LUND: It's a criminal investigation of Delphi.

13 THE COURT: So it's not really a 6th Amendment. When  
14 you say constitutional issue, it's not a 6th Amendment issue.

15 MR. LUND: Right. But in Stein they addressed the  
16 5th Amendment and the 6th Amendment and I've put in our --

17 THE COURT: But in Stein it was a criminal  
18 investigation, wasn't there?

19 MR. LUND: But before any indictments were issued, I  
20 believe, is when the alleged wrongdoing with regard to the  
21 pressure to cooperate was imposed. And, that was found to be a  
22 violation of their 5th Amendment rights to due process. Their  
23 criminality was the dispositive issue here.

24 THE COURT: Okay. All right.

25 MR. LUND: Thank you.

1 THE COURT: Ms. Steingart, I read your papers and  
2 they were fine. I don't think you need to add anything. Okay.  
3 Same with the debtors. I'm going to deny this motion which  
4 seeks amendment of a order entered earlier in this case which  
5 gave the debtors authority, and the exercise of their  
6 reasonable business judgment to indemnify, and not only  
7 indemnify, but pay, more appropriately under indemnification  
8 agreements up to five million dollars to officers and directors  
9 covered by pre-petition indemnification agreements. The  
10 movants are all former employees, officers or directors of  
11 Delphi. And, they acknowledge as they must, and as is  
12 appropriate, that their claim under the pre-petition indemnity  
13 is a pre-petition claim notwithstanding that their right  
14 accrued in, at least, in this case in terms of the amount  
15 they're seeking post-petition. And, that's very clear in the  
16 case law and, I believe, in the statute as well, and they don't  
17 dispute that. The basis for their motion is that it is unfair  
18 to give the debtor discretion to pay under its indemnification  
19 policy to current employees, officers and directors when it is  
20 not uniformly paying under that policy that is not paying the  
21 officers, directors and employees who are no longer employed by  
22 the debtor. They assert that there is a strong public policy  
23 that supports indemnity agreements which I cannot deny.  
24 However, there's a strong public policy in support of being  
25 debts, as well, all debts and bankruptcy changes that policy.

1 And, the case law is very clear as to the very limited basis  
2 for paying a pre-petition claim or debt before the conclusion  
3 of a Chapter 11 case pursuant to a Chapter 11 plan. To meet  
4 that very high burden, a debtor must show a net benefit to its  
5 post petition estate and creditors. And, if it is solvent,  
6 it's shareholders, in making the post-petition payment of a  
7 pre-petition debt before a plan. Here, the debtor established  
8 a basis for showing that benefit in that it's current  
9 employees, officers and directors, are providing it a benefit  
10 post-petition. And, consequently, the debtor has determined in  
11 exercising its judgment, that there's a net benefit to its  
12 estate and creditors in performing the pre-petition indemnity  
13 agreement as to those particular individuals essentially in  
14 return for having them to continue to function on behalf of the  
15 debtor. That benefit would not exist to the estate with  
16 respect to payments on behalf of the officers and directors and  
17 employees who are no longer working for the debtor. So there  
18 is a valid and reasonable basis for the distinction that the  
19 order that these individuals seek to amend being carried out  
20 the way it has been by the debtors. The debtors, therefore,  
21 are acting in accordance with their duties and obligations not  
22 only under the order but under the bankruptcy code. As far as  
23 the due process argument that is made, the Supreme Court has  
24 long recognized that bankruptcy generally may affect property  
25 rights, including the right to collect on an unsecured claim.

1 And, indeed, affects property rights in collateral as well to a  
2 significant extent properly. Given the absence of any proof of  
3 any effect on 6th Amendment rights or, indeed, any pressure at  
4 all in respect of an imposition by the government on Delphi to  
5 withhold payment on an indemnity which Delphi would be  
6 obligated to withhold anyway under the bankruptcy law, I don't  
7 find that there's merit in the due process aspect of the motion  
8 either. So, Mr. Butler, you can submit an order denying the  
9 motion for the reasons stated.

10 MR. BUTLER: Your Honor, thank you. If I could  
11 address the Court, briefly, on one element of the Court's  
12 ruling? Just so the record's clear.

13 There are actually, in the first day order, there  
14 were two elements -- two classes of parties -- that we had the  
15 authority but not the direction to pay. One was the one Your  
16 Honor addressed in your ruling, which was the group of current  
17 officers and directors for which there was no cap. And the  
18 second class was the ability to -- with respect to certain  
19 former officers and directors -- to pay up to five million  
20 dollars providing the compensation committee made an analysis  
21 on a case-by-case basis that there was a legitimate post-  
22 petition interest of the estate to be --

23 THE COURT: Has the debtor made any of those  
24 payments?

25 MR. BUTLER: We have made some of those payments.



1 THE COURT: All right. But it was after that type of  
2 analysis where there was a genuine benefit.

3 MR. BUTLER: Right. And that's what Mr. Opi's  
4 discussion went to -- what we talked about here in terms of --  
5 me and Mr. Opi -- that the description of what we tried to  
6 accomplish here, that's what actually occurred.

7 We have, in fact, gone through that determination and  
8 our view is -- and what we disagree with counsel is -- we don't  
9 believe, having had that discretionary authority, that that  
10 obligated us to pay anyone who might have a claim under our  
11 bylaws or under Delaware State law. That's a pre-petition  
12 claim, as Your Honor pointed out, in its Court's ruling.

13 But with respect to this pool for the pre-petition  
14 folks -- or excuse me -- the former officers and directors --  
15 the analysis we went through is whether those folks were  
16 cooperating with the company and whether they were viewed in  
17 the decision of the audit committee and the compensation  
18 committee to be, you know, so-called innocents -- meaning  
19 people that were asked to testify but had not participated  
20 directly in the issues that underlie the investigations. So  
21 people who were asked to leave the company or people who got  
22 Wells notices or people who took the fifth amendment, which can  
23 be viewed in a civil manner with the implications of that as  
24 non-cooperation. Those kinds of things.

25 The company made those decisions. The comp committee

1 acted on recommendations from Mr. Sherman and Mr. Kapilian, the  
2 general counsel and the deputy general counsel for litigation  
3 of the company. And I personally attended a number of those  
4 compensation committee meetings. There was a careful analysis  
5 done and those decisions were communicated to the former  
6 employees because the view was, as fiduciaries of the estate,  
7 we believe -- I think consistent with some of the comments made  
8 in the equity committee objection -- we believed that we had no  
9 business dealing with the claims of former officers and  
10 directors prior to the claims administration process except  
11 where we thought that there was a benefit to the estate. And  
12 we made those determinations. I just want the record to be  
13 clear on that because there were --

14 THE COURT: Okay. But, again, the order required you  
15 to make a determination as to a net benefit to the estate --

16 MR. BUTLER: Correct.

17 THE COURT: -- and that the objection seeks to  
18 overturn that aspect of the order which, in my view, is the  
19 critical aspect of the order and the only basis that would  
20 allow payment of a pre-petition claim.

21 MR. BUTLER: I just wanted the record to be clear.

22 THE COURT: Okay.

23 MR. BUTLER: And we will, Your Honor, draft the  
24 appropriate orders and submit to chamber and that can be  
25 circulated to the counsel.

1 THE COURT: Okay.

2 MR. BUTLER: Your Honor, the next matter on the  
3 agenda is really a companion motion filed by the same  
4 movants -- plus a couple of additional movants -- to now compel  
5 the debtors to deal with the advancement of defense costs under  
6 the debtor's insurance policies. This is filed at docket No.  
7 5360. Again you have the movant's motion.

8 Here you have three objections. You have the  
9 objection of the equity committee, the objection of the lead  
10 plaintiffs in the multi-district litigation and the debtor's  
11 limited objection. And here we would propose to have the  
12 movants go forward and there is, as to the objectors, a  
13 difference of view.

14 The equity committee has what I'll call a straight up  
15 objection which Steingart will want to present to Your Honor.  
16 And the lead plaintiff's objection's been resolved by the  
17 debtors in a more modified response that we have proposed.  
18 Clearly stated from -- just two seconds for the company's  
19 perspective as you think about these arguments, Your Honor.  
20 The debtor's believe that there is quantifiable property  
21 interest -- an identifiable property interest -- in these  
22 policies that are the estate's interest. We do not believe  
23 that the Court has to make any decisions about that today. And  
24 we believe that there is a limited amount of relief that can be  
25 given here, at this point in time, that would be prudent and

1 has been done in other cases. We were able to obtain the  
2 support of the lead plaintiffs with respect to that --

3 THE COURT: Well, what's the resolution there?

4 MR. BUTLER: The resolution there, basically, is they  
5 have -- so long as Your Honor doesn't make a final  
6 determination today or a determination today on the property  
7 interest -- defers that to another day, which we think makes  
8 perfect sense -- they support the debtor's form of order.

9 THE COURT: So it's one of these -- to the extent the  
10 stay applies --

11 MR. BUTLER: Exactly.

12 THE COURT: -- and if it doesn't apply then 105 would  
13 apply. Okay.

14 MR. BUTLER: And it provides the five million dollars  
15 cap, the review period, all the things that were in there. So  
16 from our perspective, Your Honor, what it does is provide  
17 parties who have -- under the insurance policies -- have an  
18 endorsement that gives them a priority of payment. And there  
19 have been waivers under the policy in terms of some of the  
20 other provisions that have been amended over time. But there  
21 are property interests because there is -- as we pointed out in  
22 our papers -- the fiduciary policy and the other policy do have  
23 linkages.

24 So there are property interests here but they don't  
25 rise to the level, in our view, that former officers and

1 directors who have, as beneficiaries, a right of payment and a  
2 priority of payment, that they should be stopped from going to  
3 the insurance companies.

4 As I understand it, it's the insurance companies that  
5 are demanding this order -- not necessarily the movants. And  
6 so that's why we spent time with the lead plaintiffs to try to  
7 figure it out because, at the end of the day, for that multi-  
8 district litigation to go forward and ultimately have a chance  
9 of settlement -- which is in the interest of the estate, by the  
10 way -- the lead plaintiffs, you know, have to have somebody to  
11 talk to and they have to have counsel representing people, to  
12 be able to work those things out.

13 THE COURT: What is the amount of these policies?

14 MR. BUTLER: The amount is -- the total of 200  
15 million dollars -- 100 million dollars of what's called side A  
16 and B coverage and 100 million dollars of A coverage on top of  
17 the tower which I can describe when I speak a little bit later.  
18 But I wanted to just give Your Honor some sense of --

19 THE COURT: And payments to date? I mean that's the  
20 total but is that all left?

21 MR. BUTLER: I don't believe -- and I'll just double  
22 check -- I don't think there have been any payments by the  
23 insurance company to anybody as we speak here today. And this  
24 relief that at least the debtors are proposing -- you know, the  
25 movants don't agree with it, necessarily -- but that we're

1 proposing -- would authorize up to five million be paid without  
2 having to come back here and talk through this all again.

3 THE COURT: And payments that have been made by the  
4 debtors that they contended they could then --

5 MR. BUTLER: Your Honor, we had a deductible we have  
6 to satisfy. One of the issues that we are still working out  
7 with the insurers is whether the payments we have made over  
8 time cover our deductibles.

9 I mean there's a bunch of other, sort of, collateral  
10 issues here that could cloud this up. But from our  
11 perspective, you know, Your Honor has just ruled that these  
12 movants cannot recover -- at least now -- from the estate. We  
13 believe that was the right ruling. We thought it was the  
14 appropriate relief from our post-petition to say that they  
15 can't also recover from an insurance policy that was negotiated  
16 for their benefit where they are the -- had the priority of  
17 payment -- seemed to us to not make a great deal of sense and  
18 we wanted to, sort of, from the debtor's post-petition to  
19 try -- between the lead plaintiffs and the movants and the  
20 company -- to try to get something on an interim basis that  
21 made sense that didn't cross into extended litigation of what's  
22 proper to the estate.

23 Because when we go through our plan of reorganization  
24 and discussions there is going to be a discussion and it's  
25 going to involve the statutory committees, the lead plaintiff,

1 their clients and us -- about this whole subject matter. You  
2 know, what the claims are, how they're going to be addressed,  
3 how they'll be addressed under a plan, how the insurer's going  
4 to participate. That discussion has to occur. That is not a  
5 today discussion. And people need to be represented to be able  
6 to move the MDL litigation into a place that that discussion  
7 can occur -- from the debtor's post-petition.

8 THE COURT: Okay.

9 MR. BUTLER: And so that's why we've proposed what we  
10 have. But in terms of the order of claimants -- it's movants  
11 first and then the equity committee who has independent  
12 concerns and then I'll address the resolution between the lead  
13 plaintiffs and the debtors.

14 THE COURT: Okay.

15 MR. STERN: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. STERN: My name is Robert Stern. I'm with the  
18 law firm of O'Melveny & Myers. I represent Alan Dawes, the  
19 former CFO as well as a collection of former directors,  
20 officers and employees. It is slightly broader than the  
21 collection that moved on the prior motion.

22 With respect to what Mr. Butler just said, there's  
23 much that we agree about. We agree on a general matter that  
24 the Court can provide us the relief we need today without  
25 resolving the question of whether the proceeds under two

1 policies that were purchased by the debtor pre-petition -- a  
2 director and officer policy and a fiduciary policy -- are in  
3 fact property of the estate or whether they are not property of  
4 the estate, subject to the stay.

5 As a practical matter, that threshold question really  
6 does divide, though, into two distinct issues which is: 1) Are  
7 the policies property of the estate? But, 2) Are the proceeds  
8 property of the estate? And, as Mr. Butler articulately  
9 indicated just before, the proceeds of those insurance policies  
10 were purchased for the benefit of the directors and officers of  
11 Delphi as well as the employees, under the terms of that  
12 policy.

13 And, frankly, there's an extensive procedure set  
14 forth in those policies governing how the property interests  
15 are to be dispersed and how the property interests are to be  
16 distributed. It's our position that there is no reason for the  
17 bankruptcy court to burden itself with that process and to get  
18 involved in that because there is a mechanism that's set forth  
19 under the terms of the property and it's well established law  
20 that where there is a process and where the terms of the  
21 property or contract are in place, the bankruptcy court should  
22 defer to that. And that's the case here.

23 But I will argue, very briefly, the question of  
24 whether these property interests are rightly property of the  
25 estate because we think it's pretty clear here they are not.



1 Under the terms of this particular insurance policy, as Mr.  
2 Butler indicated, whatever interests the debtor has, it's  
3 subordinate to the right of the insurers. There's an expressed  
4 priority of payments provision that indicates any non-  
5 indemnified claims -- such as those of my client-- are to be  
6 paid first. And only after the rights and claims of non-  
7 indemnified parties are paid can the estate seek payment for  
8 any claims that it has indemnified under side B coverage.

9 As the consequence of that, whatever rights the  
10 debtor has to those insurance policies are residual and  
11 contingent and may never come to fruition because of the  
12 practical matter it's very likely that between the defense  
13 costs -- fees and costs that are going to be incurred and  
14 settlement amounts by the former officers, directors and  
15 employees of Delphi. And by that I am not limited to the  
16 movants today.

17 We're not asking for special treatment. We're not  
18 asking this Court to treat us any differently than any other  
19 insured under the policy whose claims are not indemnified by  
20 the estate. When the claims of all those non-indemnified  
21 parties are ultimately paid out of the policies, there's a very  
22 good chance that no proceeds will be left to the estate. So as  
23 an initial matter, it's our position that there is no property  
24 interest here.

25 And with respect to the argument that the estate has

1 advance on the fiduciary claims, that's clearly contingent  
2 because they haven't been named in the ERISA case yet. There  
3 is an ERISA action pending. Theoretically, under the terms of  
4 the policy, the estate could have a vested interest in those  
5 property interests if the estate were named a defendant but  
6 they're not today. And, frankly, there's no indication that  
7 they're ever going to be --

8 THE COURT: There's the claim though, right?

9 MR. STERN: I'm sorry?

10 THE COURT: Won't there be a claim in the bankruptcy  
11 case?

12 MR. STERN: It's not at all clear to me that any of  
13 the ERISA claimants are going to be making a claim in the  
14 bankruptcy court. As of today, I don't know that one has been  
15 made.

16 MR. BUTLER: I don't -- there's 21,000 claims --  
17 16,000 actual claims. I can't tell you off the top of my head.  
18 But I think they have made a claim.

19 THE COURT: Okay. But let's get -- as a practical  
20 matter, the debtors proposed a mechanism that's been dealt in  
21 other cases in a somewhat different context but similarly to  
22 permit some of the money to go out and make it clear to the  
23 insurers that they should advance on that basis. Do you have a  
24 problem with that aspect of it?

25 MR. STERN: There are certain aspects of it that I do

1 not have a problem with and, in fact, we support reasonable  
2 efforts to ensure that the insurance proceeds under the DNO and  
3 fiduciary policies are not wasted.

4 We do have a problem with the proposal and the  
5 mechanisms that have been proffered by the debtors for  
6 basically two reasons. And I'm going to take each of the  
7 relief that we have a problem with in turn.

8 The first is that the insureds under these policies  
9 submit our billings, fees, statements, and everything to this  
10 Court, to the trustee, to Delphi and to the debtor for review  
11 and approval. That process is unnecessarily burdensome. It's  
12 a waste of judicial resources because, frankly, it's advisory.  
13 There is a mandatory alternative dispute resolution provision  
14 in both policies that affords any insured or the insurer with  
15 the right to seek mediation and/or binding arbitration  
16 concerning fees sought and/or approved and fees sought and  
17 refused under the terms of the policy. The bankruptcy court --  
18 or this Court rather -- has no basis for vitiating that  
19 mandatory arbitration provision.

20 So to the extent that parties are submitting our fees  
21 for approval to this Court or to the trustee -- whatever ruling  
22 this Court or the trustee or anybody else makes with respect to  
23 whether fees are properly payable or not -- that doesn't change  
24 the party's rights and responsibilities under the policy so the  
25 insured can still seek arbitration or mediation to resolve that

1 in a separate proceeding and we would have to litigate again  
2 whether the approval of certain fees is appropriate under the  
3 terms of the policy.

4 THE COURT: Okay.

5 MR. STERN: And, second of all, in the event that  
6 something is denied to the insureds, we can seek mediation or  
7 arbitration to resolve that. Not to mention there's already a  
8 built-in process for insuring that these assets aren't  
9 dissipated. It's the carrier and the carrier's counsel.  
10 Nobody has a more vested interest in preserving the amounts of  
11 the insurance policy than the insurance carrier. Amounts that  
12 aren't spent for defense or for settlement, they get to keep.  
13 Right? If they have hired counsel -- outside counsel -- who is  
14 expert in reviewing fees and advising them on the terms and  
15 conditions of the policy to insure that their rights are  
16 preserved -- and, frankly, that the policy proceeds are  
17 preserved -- injecting this Court, the trustee and the estate  
18 into the process only creates an additional layer, not to  
19 mention it raises significant -- significant privilege issues  
20 here. Because as a practical matter, the movants and many of  
21 the insureds under this policy are adverse to the equity  
22 holders, to the lead plaintiffs, and are likely to be adverse  
23 to the estate at some point, to the extent that the estate has  
24 assumed the claims for breach of fiduciary duty that were  
25 previously filed as a shareholder derivative action. So,

1 compelling us --

2 THE COURT: All right. I got that point.

3 MR. STERN: Okay.

4 THE COURT: What's the other basis?

5 MR. STERN: And the other basis is the five million  
6 dollars cap, while it's reasonable for us to continue to come  
7 back to the Court and seek approval of additional amounts,  
8 given the scope and complexity of this litigation with its  
9 shareholders securities fraud claim, an ERISA claim, a  
10 derivative action, and SEC enforcement proceeding and a pending  
11 criminal action all going on against, not only these nine  
12 movants, but the range of former officers and directors under  
13 the policy. To set a five million dollars cap is going to  
14 require us to be back before this Court unnecessarily  
15 frequently.

16 What we would propose this Court does is it dock the  
17 relief. It was applied in the Enron litigation and in the  
18 WorldCom litigation where every time a new layer of the  
19 property is triggered we will come back to this Court. The  
20 Court, trustee, everybody else can review whether the  
21 expenditures under the prior letter were reasonable --

22 THE COURT: This is just for defense now, right?

23 MR. STERN: I'm sorry?

24 THE COURT: At this point we're just talking about  
25 defense costs?

1 MR. BUTLER: We're talking defense, Your Honor. The  
2 first layer is twenty-five million dollars. So what he's  
3 really saying is make five, twenty-five. And we'll address why  
4 we're opposed to that in a few minutes.

5 MR. STERN: And at this point, it's defense but  
6 frankly it could be settlement. Right? It is not at all clear  
7 to me. It's not at all clear to me that somebody who might  
8 have a claim to the policy -- other than the movants -- is not  
9 in settlement negotiations. And as a practical matter -- back  
10 to my --

11 THE COURT: Well, they haven't asked for it.

12 MR. STERN: Haven't asked for it and we're not asking  
13 to be treated any differently than any other insured under the  
14 policy. Not to mention the one last point on the five million  
15 dollars, Your Honor, is many of the movants on this motion have  
16 not had any fees advanced by Delphi or otherwise paid at all.  
17 To the extent the Court imposed a five million dollar cap that  
18 we were going to have to come back and seek to have raised --  
19 lifted at a later date -- the one year's worth of fees that  
20 have already been incurred by movants and others is going to  
21 come right off the top immediately. I don't know what the  
22 number is among all the nine movants but it is a year's worth  
23 of legal fees and costs in defense of our client.

24 Earlier today you heard about the hardship that  
25 professionals have suffered and incurred in representing the

1 estate. Counsel for the movants has been far more  
2 disadvantaged because we have not been paid in over a year.  
3 And to the extent of a five million dollar cap, everything that  
4 we haven't been paid is going to come right off the top of  
5 that. And that's our second problem with setting the cap at  
6 five million dollars.

7 THE COURT: Okay.

8 MS. STEINGART: I was just waiting to see if there  
9 was anyone else to speak in favor of the motion. Good morning,  
10 Your Honor. Bonnie Steingart from Fried Frank on behalf of the  
11 official Committee of Equity Holders.

12 I think that we find ourselves at an interesting  
13 juncture. The premise of this matter being before the Court is  
14 that the insurance policies are property of the estate. That's  
15 number one. The only reason that the Court is issuing an order  
16 or has authority with respect to the insurance policies is  
17 because the policies are property of the estate. And I think,  
18 given the debtor's assertion of the operation and application  
19 of these policies to both the ERISA actions as well as to these  
20 indemnity claims, there can really be no doubt that the  
21 policies are property of the estate.

22 We also have a situation, Your Honor, where it's  
23 undisputed that the movants, by and large, were key persons --  
24 former executives and employees of the debtor -- who were  
25 intimately involved in the transactions that were the subject

1 of the SEC complaint involving massive and sustained fraud.  
2 Two of the movants have been --

3 THE COURT: But that didn't seem to move Judge Bear  
4 or Judge Gerber in the Adelphia case where people were  
5 indicted. And he even gave them some money when they were  
6 convicted and appealing so -- and that hasn't happened here.

7 MS. STEINGART: Your Honor, I think that those issues  
8 are very live issues and I think that we can sort of split the  
9 baby and we can dance around, that allegations are not admitted  
10 or denied.

11 But there's also the provision in each of the consent  
12 decrees that those who consented cannot publicly deny the  
13 allegations contained in the SEC complaint -- or dispute those  
14 allegations. I think that that really does create a conundrum  
15 for a court of equity, especially where --

16 THE COURT: I'm sorry. But let me back up. The  
17 indemnification agreement and the property and New York law --  
18 or applicable law -- all place limits on indemnification. And  
19 in some respects, courts have required disgorgement of money  
20 that was paid, if it turns out that the person didn't have the  
21 right. Is that what you're arguing here? Or just that that  
22 might happen?

23 MS. STEINGART: I'm arguing two things, Your Honor.  
24 Essentially, the request here is premature. It's one thing to  
25 permit payment such as these when we have a plan or when we



1 have a resolution -- the kind of resolution that everyone is  
2 eager to talk about.

3 And indeed, that's when one can make an assessment of  
4 exactly what claims will be made on these policies and exactly  
5 how much of the liability that -- and claims that had been  
6 filed against the defendant or -- I'm sorry -- against the  
7 debtor here -- would be covered by the funds that are available  
8 under the policies.

9 Your Honor, that has not been done. And, indeed,  
10 certainly as a threshold matter, before one is going to prefer  
11 some unsecured creditors over others -- because that's what  
12 these are. These are pre-petition --

13 THE COURT: But doesn't the insurance prefer them? I  
14 mean that's what's really being looked to -- is the insurance?

15 MS. STEINGART: No, Your Honor. The insurance does  
16 not prefer them because what the insurance provides is a pot.  
17 And the pot is there to provide coverage for any number of  
18 claims.

19 THE COURT: But doesn't it have a priority element to  
20 it?

21 MS. STEINGART: With respect to the policies that the  
22 debtor discussed in the response that the debtor filed, that is  
23 a cap that goes to the overall fiduciary policy as well as to  
24 the indemnity policy. And we're not saying that there are no  
25 circumstances under which these --

1 THE COURT: But wouldn't they pay out under their  
2 indemnity first since that's the one that's the priority? I  
3 mean that could be dealt with in the order couldn't it?

4 MS. STEINGART: Well, Your Honor, it really depends  
5 on what determinations are made with respect to entitlement.  
6 And that's why we have a chicken and egg problem here.

7 We have Mr. Butler and others describe the kind of  
8 review that was made by the audit committee, as well as the  
9 compensation committee, with respect to each of the individuals  
10 who are moving before the Court today. And the debtor decided  
11 that it could not pay these -- could not advance these monies  
12 because advancing the monies to these persons did not advance  
13 the interests of the estate. We have a pot of insurance money,  
14 Your Honor, that can be used to pay any number of claims that  
15 have been filed against this debtor.

16 THE COURT: No, but a bank or a bondholder who  
17 advanced money to the debtor wouldn't be paid a pre-petition  
18 debt, either, because that wouldn't advance the interest of the  
19 estate. But it's still a legitimate claim.

20 MS. STEINGART: But there's no reason to put these  
21 pre-petition claimants --

22 THE COURT: But this is insurance. This is  
23 insurance.

24 MS. STEINGART: Well, the insurance is there for any  
25 number of purposes and there's nothing, Your Honor, that

1 requires the policies of a company in bankruptcy to be  
2 exhausted early on in this manner when the debtor has not even  
3 made a determination as to what claims --

4 THE COURT: But we're not talking about -- but what's  
5 being proposed is not exhaustion. I mean I understand the  
6 motion suggested that but what's being proposed now is  
7 something that's not exhaustion. It's, you know, a few million  
8 dollars out of a 200 million dollar policy.

9 MS. STEINGART: Well, I think that the policies that  
10 we have discussed in the preliminary aspects of the motion are  
11 twenty-five million. We've heard that the five million being  
12 requested now is really the tip of an iceberg and that people  
13 will soon be back before the Court asking for more. And that  
14 really does drive home the point, Your Honor, that these  
15 amounts are being asked for prematurely. They're being asked  
16 for before the debtor has gotten its arms around all of the  
17 claims being made, all of the insurance proceeds and how those  
18 can be used best to resolve all of the outstanding litigation.

19 They're being requested by persons that the company  
20 itself has determined were integral to the wrongdoing that  
21 occurred -- that these individuals who only had pre-petition  
22 claims are then getting advanced payment over others with pre-  
23 petition claims. And they are getting recoveries when the  
24 stakeholders, who were most injured by the diminution in value  
25 and false financials, stand to get nothing.

1 And that, Your Honor, seems to me to be unfair in the  
2 extreme. This is a court of equity. And while at some point  
3 in time, Your Honor, when someone presents a package and says  
4 there are these claims and in addition to the claims there are  
5 these requests for indemnity and we have this pot of insurance  
6 and we're going to resolve all of it from this pot.

7 Your Honor, that is something that, at some point in  
8 time, we can embrace. But at this point in time, having these  
9 individuals get this kind of priority -- when decisions have  
10 been made that it is likely that they did not deal with the  
11 company and deal with their responsibilities in good faith --  
12 seems not consistent with the code and not consistent with the  
13 kinds of determination that were made with respect to the  
14 earlier motion to amend the other order.

15 So from a preliminary point of view, Your Honor, we  
16 would ask that this come back. This is premature and it should  
17 come back to the Court at some point in time when there is a  
18 resolution so that the debtor can tell the Court what the pot  
19 of insurance is and how it's going to be used and that the  
20 debtor will emerge in a way that this does not create an  
21 overhang. Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. BUTLER: Your Honor, I think you have staked out  
24 in the prior two arguments, the two ends of the spectrum which  
25 is -- on the one hand, really, what the movants are saying is,

1 you know, don't pay us five million, pay us maybe twenty-five  
2 million or whatever we want and don't have everybody review it  
3 who was associated with the estate -- insurers will do a good  
4 job of that.

5 And then, on the other hand, you've got the equity  
6 committee saying -- and I know they believe it sincerely, it's  
7 not just a litigation position -- these guys are the bad guys,  
8 don't pay them anything.

9 And the company's in the middle on this and it's  
10 proposed a more moderated view for several reasons. First,  
11 there is a difference between these two motions -- the one we  
12 just heard and this motion. There is a difference between the  
13 debtors deciding that they should pay out of estate proceeds on  
14 a post-petition basis, pre-petition claims in advance of a  
15 plan, and whether there's an estate interest in doing that.  
16 And the issue of whether or not they are contractual  
17 beneficiaries to an insurance policy purchased for their  
18 benefit and as part of the DNO package should have access to  
19 that package. And the view is -- from our post-petition -- is  
20 there is a distinction. And the reason we end up on the side  
21 that we're on here -- which is to say there should be something  
22 done now because there's clearly a property interest here.

23 We're not asking the Judge to rule on that today.  
24 But the fact is there is a property interest here and that  
25 property interest is tied from the fiduciary policy into the

1 main policy and the fact that we haven't been named yet in an  
2 ERISA case isn't -- doesn't matter. The fact is we could  
3 named. The statute hasn't run, as I understand it and  
4 therefore there is --- as we looked at this and studied this  
5 very carefully --

6 THE COURT: Well, there's a bar date, though, right?

7 MR. BUTLER: There's a bar date. Yeah, but there  
8 have also been claims -- ERISA claims -- filed with us, Your  
9 Honor.

10 THE COURT: So, you've already been --

11 MR. BUTLER: Yeah -- named in that sense. But not  
12 named in, you know, we're not in the MDL litigation right now.  
13 And so what I'm trying to say is that there is a property  
14 interest here.

15 But I do believe, you know, the fact is, as we've  
16 said in our papers and conceded, there is a priority of  
17 payments in favor of non-indemnified claims. And to the  
18 extent, as Your Honor indicated earlier --

19 THE COURT: On the twenty-five million dollar policy?

20 MR. BUTLER: Excuse me?

21 THE COURT: On which policy?

22 MR. BUTLER: On the 200 million dollar policy.

23 THE COURT: The whole 200 million.

24 MR. BUTLER: And so my point is our property interest  
25 is, you know -- I don't believe at the end of the day if you

1 were to actually litigate that today -- I don't think the  
2 estate property interest -- and there are some other interests  
3 we have -- I don't think that the estate property interest  
4 ultimately, you know, would necessarily preclude the whole 200  
5 million dollars policy.

6 I would lean to fight that fight today. There is a  
7 basis to be here, in our view, that there is a property  
8 interest in these estates. I'll also point out, Your Honor,  
9 there's lots of other provisions to these policies that we  
10 haven't talked about. There's an exclusionary provision to  
11 this policy that basically says if there's found to be the  
12 adjudication of fraud then the policy doesn't pay.

13 THE COURT: So, in other words, Ms. Steingart talks  
14 about my authorizing the money to be paid. Really, what's  
15 being asked here is simply to make it clear that the stay -- to  
16 the extent it applies -- is lifted to permit a claim to be made  
17 under the policy, subject to all the policy's other provisions  
18 including the one you just mentioned as well as the debtor's  
19 claims against the indemnified party. Is that right?

20 MR. BUTLER: I think that's correct, Your Honor.

21 THE COURT: Well, what is it that remains to be done  
22 in litigation by these nine people?

23 MR. BUTLER: Well, I think their journey is only  
24 beginning to be under way I think. There are a lot of  
25 people --

1 THE COURT: I mean, there are some people who have  
2 signed settlements that are decrees --

3 MR. BUTLER: With the SEC.

4 THE COURT: -- with the SEC.

5 MR. BUTLER: There's a parallel investigation with  
6 the Department of Justice. They have been named  
7 individually -- many of them -- in the MDL litigation --

8 THE COURT: And then there's the civil --

9 MR. BUTLER: -- which is still stayed at the moment.  
10 But, you know, that is going to move to the next stage at some  
11 point down the line. And our sort of response to the, you know  
12 -- I should tell you with respect to the equity committee, they  
13 felt about this so strongly that the chairman of the equity  
14 committee wrote our CEO a letter and an impassioned plea saying  
15 come to our point of view because these, in our view, are bad  
16 guys. They shouldn't get it.

17 And we spent a lot of time explaining to the  
18 committee, privately, why we thought that was not in the  
19 estate's interest because the fact is DNO insurance policies --  
20 whether our priority of payments are intended to preserve the  
21 DNO system in this country -- and for Delphi -- and that is an  
22 important interest to the estate.

23 Second interest to the estate is, we do believe if  
24 we're ever going to get the MDL resolved without going into the  
25 framework context we've talked about, Your Honor, the fact of



1 the matter is that we are going to sort that out with the MDL  
2 folks at some point in time. We need people to be represented  
3 in that action.

4 And where I disagree with the movants, on the other  
5 hand, is I don't think they should have their cake and eat it  
6 too. There is a property interest here. There are a series of  
7 issues. The equity committee raises some issues that I think  
8 are legitimate that need to be sorted out.

9 And the point ought to be that there ought to be some  
10 level of oversight. If they want -- if the insurance company  
11 is demanding and wants an order of this Court that will allow  
12 these claims to go forward and the movants want to collect  
13 against this policy right now -- as has been done in other  
14 cases -- there ought to be limitations. And that includes the  
15 review. There's nothing in this review mechanism which says  
16 that they submit statements to the Court and to us that says  
17 that, you know, if we object to it, ultimately that's the end  
18 of the game of the litigation. It just means they can't use  
19 the authority under this order.

20 THE COURT: Well, do the other beneficiaries and the  
21 debtor have the right under the policies to complain about  
22 excess payment to the DNOs?

23 MR. BUTLER: Presumably people do have that right,  
24 Your Honor. But as was pointed out, I mean this is, you  
25 know -- I was reading through and --

1 THE COURT: But the ADR that counsel referred to  
2 doesn't go to that. Right? That just goes to -- it's not just  
3 the insurers right to object but other parties have the right  
4 to raise it too?

5 MR. BUTLER: Right. But that's the ADR under that  
6 policy. The point is -- this question isn't what can be  
7 litigated under that policy because, you know, there's ADR and  
8 there's also lawsuits that occur in state court under state  
9 insurance laws.

10 The question here is both these movants and the  
11 insurance company want an order from this Court in which these  
12 debtors acquiesce that says it's okay to do this. And if they  
13 want that from us -- from this Court and from the estate --  
14 after we've consulted with our statutory committees, we  
15 understand one of them is not objecting to this approach but  
16 has views that it communicated to us. And the other one is  
17 absolutely opposed to this approach. From the company's  
18 perspective, we need to be able to try to move in a responsible  
19 fashion.

20 And so what we're here for is, Your Honor, from our  
21 post-petition as we've thought about this, read the case law,  
22 observed what's happened in the Southern District in New York  
23 in other cases, we believe it's possible for Your Honor to say,  
24 look, I have the jurisdiction to do this because of the  
25 property interests -- attenuated property interests -- that the

1 debtor has asserted. I'm not going to reach that issue --  
2 which is what the lead plaintiffs don't want it reached  
3 today -- and we agree with them.

4           It does not need to be finalized today. And simply  
5 say, for the moment, I'm prepared to say you've got a five  
6 million dollar pot to go with the insurance companies. They've  
7 still got to go through their process. I'm not directing them  
8 to pay this. They've got to do it under the policy. But  
9 you've got the right to do that. Here's the comfort order for  
10 the insurance company. But you know what? Let us know what  
11 you're doing. Because if it turns out that one of these  
12 plaintiff's counsel -- or one of these defendant's counsel,  
13 rather -- turns in a bill for four and a half million dollars  
14 and everyone else turns in a bill for fifty thousand dollars,  
15 people in the estate may have a view about that. And we may  
16 not want the authority in this order to be used in that way.  
17 And that's all we're saying.

18           We're saying if you think you need this because the  
19 insurance companies told you they're not going to advance  
20 without this comfort order, then you at least need to provide  
21 information about your fees to the key people in this estate --  
22 the fiduciaries to this estate -- that we know what's going on.  
23 And that's the point of it because I'm talking about not what  
24 my rights are under the insurance company. I'm talking about  
25 whether or not they should have authority under this order.

1 And if they want the authority under the order then they're  
2 going to have to live with some reporting obligations.

3 And as to the privilege matter, I'm going to ask to  
4 see privileged narrative detail. I think, from the debtor's  
5 perspective, we're much more interested in understanding what  
6 is happening and the rate of consumption and by whom, then we  
7 are, you know, trying to find out that on, you know, January  
8 17th the following seven tasks were done by somebody. And  
9 that's not the point of this. But I think there needs to be  
10 reasonable monitoring of things.

11 And, Your Honor, we would oppose the concept that  
12 they have unfettered access to the first tier of the policy  
13 which is 25 million dollars. And then let's come back in, you  
14 know, six months and sort it out. We think there needs to be a  
15 limit and that we need to be able to review it.

16 And, you know, movants can't even tell us what their  
17 fee total is. So, you know, I don't know whether five million  
18 is too small or not. If it turns out they consume the five  
19 million, we can be back here with another omnibus and come to  
20 the Court.

21 THE COURT: Okay.

22 MR. BUTLER: That's our -- that's the company's view,  
23 Your Honor.

24 THE COURT: Okay. Mr. Etkin?

25 MR. ETKIN: Your Honor, briefly. Bankruptcy does

1 make strange bedfellows sometimes. Your Honor, I think that  
2 the Court is obviously familiar with what our view is on the  
3 property of the estate issue and that we didn't file papers  
4 objecting to the relief that was requested by the movants.

5 We just wanted to make it clear what our view was on  
6 the property of the estate issue. And, as the debtor points  
7 out -- and we agree that the Court need not reach that issue.  
8 And many courts have not -- and purposely have not -- reached  
9 that issue because it's unnecessary to reach that issue.

10 But I do want to make our position to the Court  
11 clear. We did review the debtor's papers, had conversations  
12 with debtor's counsel and are able to support the form of order  
13 which is a little different than the form of order that was  
14 submitted with their response -- that the debtors have put  
15 together. I do want to talk briefly since the equity committee  
16 is standing on their position and has chosen to argue the  
17 merits of the property of the estate --

18 THE COURT: No, you don't have to do that.

19 MR. ETKIN: I just want to point one thing out --

20 THE COURT: All right.

21 MR. ETKIN: -- that's very important that has not  
22 been mentioned. I'm not going to get into it.

23 THE COURT: You only have a chance of losing at this  
24 point. Really, no, I'm serious. You can go ahead. I'm sorry.

25 MR. ETKIN: It's not only the DNO policy that has the

1 order of payments provision. It's the fiduciary policy as  
2 well.

3 THE COURT: Right.

4 MR. ETKIN: And although there's linkage there and  
5 the debtor may be a defendant at some point in the future with  
6 respect to the ERISA case, that really doesn't matter. Also,  
7 because the ERISA policy -- the fiduciary policy -- provides  
8 that it first goes to fund the natural person defendants and  
9 not the sponsor or any corporate defendant in the case. So to  
10 the extent that these cases turn on the existence of those  
11 clauses, that's a very powerful point to be made. But that  
12 doesn't mean we're backing away from what we've agreed to with  
13 the debtor in terms of a solemn lock agreement.

14 THE COURT: Okay.

15 MR. ROSENBERG: Very briefly, Your Honor, if I may.  
16 While the creditors' committee did not file papers here, I  
17 think the issue is important enough that our point of view  
18 should be on the record.

19 While it is extremely easy for us to reach the  
20 conclusion that the unfettered release sought by the movant  
21 party should be denied, it was much more difficult for us to  
22 consider what was the appropriate position as between the  
23 position, for example, expressed by Mr. Butler and the  
24 expression expressed by Ms. Steingart.

25 And where I think we come out today -- with the

1 emphasis on today -- is to reluctantly go along with the level  
2 of relief that the debtor is seeking. And by saying it that  
3 way I want to reemphasize our opposition to any relief in favor  
4 of the movant party beyond that.

5 Ms. Steingart's position -- for all the obvious  
6 reasons -- has a great deal of appeal to other stakeholders in  
7 the case. And yet, it is difficult for us to take the position  
8 that the debtor's proposition that it will be easier to settle  
9 the entire MDL litigation if a small amount of the proceeds  
10 were available for this purpose -- it is difficult for us to  
11 say no, that's wrong.

12 So I think our position is five million dollars seems  
13 like the right amount to experiment with to see whether it does  
14 indeed progress the MDL situation toward a settlement posture.  
15 More can be considered thereafter. Alternatively, I will be  
16 happy, at that point, to say to Ms. Steingart you were right,  
17 you know, and eat crow. And no more should go out if that is  
18 the case.

19 So this is sort of a longwinded way of saying we can  
20 go along with the debtor today but we certainly want to reserve  
21 our rights in the future to say, no more, Ms. Steingart's  
22 right, let's decide the property of the estate issues.

23 THE COURT: Okay.

24 MR. STERN: Your Honor, may I respond to the equity  
25 holders?

1 THE COURT: Very briefly.

2 MR. STERN: Very briefly. I just want to make two  
3 very quick points in response to the equity holders. One, as  
4 Ms. Steingart has argued, my client is supposedly a wrongdoer.  
5 But the fact of the matter is, the policy -- the language of  
6 the expressed policy -- speaks to when coverage is vitiated  
7 under her unclean hands theory. And it requires an actual  
8 finding of malfeasance, fraud. There has been no such finding.

9 Second, she draws no distinctions between the policy  
10 and the proceeds of the policy. While it is well settled that  
11 the insurance companies themselves are property, proceeds  
12 aren't. And, you know, to the extent we're going to litigate  
13 over whether the policies are property of the estate, I think  
14 it's a very important distinction.

15 And finally, if I may point out, it's not surprising  
16 to me that the equity holders are the strongest opponents of  
17 our motion because, frankly, they are the ones who are  
18 adversaries in all the civil litigation which, as Mr. Butler  
19 indicated, just started. Motions to dismiss have not even been  
20 ruled on. The plaintiffs have filed a motion to amend their  
21 complaint and file a whole new complaint. And what better way  
22 to cripple the individual's defense than to deny them their  
23 sole source of funding for their defense which are these, you  
24 know, proceeds.

25 So the extent that we have -- as Mr. Butler



1 indicated -- a long road to hoe in front of us in defending  
2 civil litigation just underway, SEC actions just underway, and  
3 a potential criminal investigation where no indictment has yet  
4 been handed down. These policy proceeds are the sole source  
5 for our clients to do that. And to deny us or to limit us  
6 would be unfair.

7           Lastly, in response to Mr. Butler, I appreciate the  
8 desire to just monitor amounts and not detail. And that would  
9 be something that we could be amenable with. And, in fact,  
10 that may actually cut against capping it any point again today.  
11 Whereas we could provide you -- the Court, the trustee, and the  
12 estate -- with regular updates on the amounts that are being  
13 dispersed in the insurance proceeds. And that would not be  
14 limited to the movants. That should cover any insured under  
15 the policy.

16           And to the extent that those updates are provided  
17 with respect to outgoing disbursements, any party then can come  
18 back to this Court if they believe that amounts are being  
19 wasted and object at that point.

20           The process that's being proposed here turns  
21 everything on its head because it places the burden on us to  
22 show that our disbursements are reasonable when, in fact, the  
23 burden should be on objectors to determine that the insured's  
24 use of the policy are unreasonable. And, in fact, there has  
25 been no showing this point.

1 And, finally, with respect to Mr. Butler's inquiry, I  
2 have no reason to believe that the movants are anywhere near  
3 the five million dollar cap. We are far below that at this  
4 point, to the best of my understanding.

5 THE COURT: Okay. I have before me a motion by  
6 certain beneficiaries of insurance companies of the debtors for  
7 relief from the automatic stay to the extent that the stay  
8 applies.

9 And, as I gather from the hearing, it is largely as a  
10 result of concerns or opposition raised by the underlying  
11 insurance carriers to enable the insurance carriers to advance  
12 them and any other beneficiary under the policy amounts that  
13 they may be entitled to under the debtor's insurance policies.  
14 It's opposed by the official equity committee and opposed, in  
15 part, by the debtors and others.

16 The parties all agree that the policies themselves  
17 are property of the debtor's estate. There's a live issue as  
18 to whether the proceeds of the policies are property of the  
19 estate which the debtor's proposed solution to that aspect of  
20 this motion would sidestep.

21 I'll note that the Court wouldn't be writing on a  
22 blank slate on this issue although the slate is fairly muddy  
23 and I'll refer there to Judge Bear's decision In Re: Adelphia  
24 Communications Corporation 298 BR49 SDNY 2003 as well as a  
25 wonderful footnote in Judge Gerber's decision In Re: Adelphia

1 302 BR439 in which he shows, with some cogency, why the Court  
2 that reversed him may have made a mistake on the issue.

3 So it's probably advisable to sidestep that issue at  
4 this point, given the amount of insurance that is currently  
5 available. And I'll do that.

6 And then the issue, really, I think goes down to the  
7 two points that the movants raised in opposition to the  
8 debtor's proposal which is that the movants not be required --  
9 as some courts have -- for example Auditor and Hadden LLP  
10 335BR666 from the bankruptcy court Northern District of Ohio  
11 2006 -- to submit monthly fee applications to the Court and to  
12 parties of interest or fiduciaries of the estate for review.  
13 They claim that this raises serious privilege issues as well as  
14 sidesteps the ADR provisions set forth in the policies and, in  
15 any event, is overly intrusive given their rights under the  
16 policies.

17 Secondly, they object to the amount of the cap that's  
18 proposed -- the five million dollar cap proposed by the debtors  
19 -- and again that cap is a cap on the amount that the stay  
20 would not apply to. It doesn't represent any concession by any  
21 party that the beneficiaries would have a right to advancement  
22 of that money under the policies.

23 I led off by referring to the dispute over the  
24 property of the estate issue. I do want to address, however,  
25 the equity committee's point which, in essence, is that the

1 estate does have some interests in these policies and/or other  
2 beneficiaries do and that it is premature to let money out of  
3 the policies at this point, given those conflicting interests.  
4 Now, particularly, they contend to individuals who may be  
5 malfeasants. On that point, I might believe differently if the  
6 amounts of the policies were lower, if other beneficiaries had  
7 appeared, if these beneficiaries were limiting the amount that  
8 they're seeking just to them as opposed to all beneficiaries  
9 and if there had been a further determination of liability --  
10 either criminal or civil -- of these individuals. But I think  
11 that none of those facts pertain here.

12 I'll note that in the Adelphia case, even though  
13 there were indictments of the Rigases, both Judge Bear and  
14 Judge Gerber agreed that money should go to fund their defense  
15 costs in the criminal action. Judge Gerber did subsequently  
16 limit the amount that the Rigases could use on their appeal of  
17 their criminal conviction. But we're -- in this case -- far  
18 away from those facts.

19 So given the undisputed interests that the  
20 beneficiaries have as beneficiaries of these policies, I won't,  
21 under these facts, won't accept the equity committee's rational  
22 here.

23 As far as the two specific objections that the  
24 movants have raised to the debtor's proposal I will permit the  
25 stay to be lifted as to five million dollars of insurance

1 proceeds and it would be those proceeds that would logically be  
2 the priority proceeds that would go to individual  
3 beneficiaries.

4 I do that for a couple of reasons. One, counsel has  
5 not been able to say to me how much his clients have incurred  
6 to date -- or a projection -- and in fact represents that the  
7 amount that they've incurred is far less than five million.

8 In addition, although to lay people the amount of  
9 five million dollars may be extraordinary, my view is that just  
10 based on what I've heard on the record as to the status of this  
11 litigation, it's a fair amount, at least for the foreseeable  
12 future.

13 As far as review of individual billings is concerned,  
14 I am not going to require that. I'm doing that for a couple of  
15 reasons. First, I think that the movants and any other  
16 beneficiary have their own risks under the policies in respect  
17 of improvident incurrence of fees. Secondly, the policies  
18 themselves provide for dispute resolution mechanism on that  
19 issue as well as other mechanisms that the debtors may have.  
20 And third -- and perhaps this is most important in my  
21 thinking -- given the amount of the cap which could, by an  
22 improvident lawyer, be blown through, the beneficiaries and  
23 their counsel bear the risk, going forward, if they come back  
24 to the Court that they've blown through it improvidently that  
25 at that point everyone can raise their issues either here or

1 through the ADR mechanism provided for in the policy.

2 So I know that there has been a modification of the  
3 order that Mr. Etkin and his clients have agreed to. I haven't  
4 seen that but as long as it provides that the stay is lifted to  
5 the extent it applies and otherwise, the Court under 105,  
6 restricts access to the policy proceeds with the exception of  
7 the five million dollars cap.

8 I think it is fair to require periodic reporting of  
9 amounts actually disbursed so that people can keep an eye on  
10 that, but nothing more than that.

11 MR. BUTLER: Your Honor, I'll make the adjustments.  
12 The language between the lead plaintiffs and the debtors is  
13 really a word or two adjustment to paragraph 4 of your --

14 THE COURT: Okay.

15 MR. BUTLER: And so it's just to clarify that you  
16 aren't reaching any adjudication regarding whether the proceeds  
17 of the policy are property of the estate and that all parties  
18 in interest reserve their rights. So there's just a couple  
19 words here.

20 THE COURT: All right. Well --

21 MR. BUTLER: We'll make those changes, Your Honor,  
22 consistent with your ruling and submit to chambers.

23 THE COURT: Yeah, you don't have to settle that but  
24 you probably should circulate it to the people who've spoken  
25 today.

1 MR. BUTLER: We will.

2 THE COURT: Okay.

3 MR. BUTLER: Your Honor, just looking ahead at the  
4 balance of the hearing. We now have matters 41 through 45  
5 left. So five more matters. I'd like to take up -- even  
6 though you said I could go in order -- I'd like to go out of  
7 order briefly just to address matter 45 which is the LNW  
8 Engineering a motion matter at docket No. 22.

9 I just want to advise the Court that this issue which  
10 has been fully briefed and which Your Honor had said at some  
11 point you're going to want to understand in advance whether  
12 you're going to be asked to rule on it so that the Court  
13 chambers can prepare. The parties have now agreed to put this  
14 off to the April 26, 2007 omnibus hearing with Your Honor's  
15 permission.

16 THE COURT: Okay. That's fine.

17 MR. BUTLER: As to matters 41 through 45, we have  
18 three claims matters to deal with, Your Honor. We actually  
19 think we can get this entire claims thing done in about thirty  
20 minutes. However, we'd like to take five minutes before we do  
21 that to make sure we've got our ducks in order.

22 I think we're down to one objection on -- that  
23 actually needs to be heard today -- as we're trying to sort  
24 through all of this. And then, after we're done with the  
25 claim's matter, Your Honor, and we get to matter number 44

1 which is the USW motion involving a particular employee. Based  
2 on some federal statutes, including HIPA, we're going to ask  
3 the Court to close that hearing to simply the parties in  
4 interest --

5 THE COURT: Okay. That's fine.

6 MR. BUTLER: -- because we'll be dealing with --

7 THE COURT: No, I already have some stuff under seal  
8 on that. That's fine.

9 MR. BUTLER: So, Your Honor, could we take five  
10 minutes and then we'll come back on?

11 THE COURT: Yes, although, I hate to do this but --  
12 and I'm doing it partly because the claim procedures order is  
13 something that involves me and my schedule and the like. And  
14 I, therefore, in light of the objections, marked it up. Your  
15 changes are substantially in accordance with what I've done.  
16 In fact, three of them I would add. I don't know if it makes  
17 any sense to give you my markup or not. I mean you've done a  
18 lot already of progress and I don't want to mess that up.  
19 But --

20 MR. BUTLER: We obviously, Your Honor, would love to  
21 be guided by your markup if we can take a look at that. And we  
22 have resolved, we think, all of the objections other than one  
23 objector to one issue.

24 THE COURT: All right.

25 MR. BUTLER: But certainly if we could gander yours



1 over during the break, it would give us --

2 THE COURT: Maybe there are people who could tell me  
3 that it doesn't -- there are three things that I think in your  
4 markup which I got this morning -- I would add to what my clerk  
5 can give you. And they are the extension of the period -- I'm  
6 going now on the omnibus response as opposed to the order.  
7 It's paragraph 10b on page 7.

8 MR. BUTLER: Um-hum.

9 THE COURT: Secondly, the statement of issue on page  
10 8 of that, g. And then 10j limiting the mediation to a single  
11 day unless the parties agree otherwise -- to keep the costs  
12 down. Those are all -- I hadn't thought of those things and  
13 they all seem like good ideas to me. But then I'll give you  
14 this markup -- my clerk will give you this markup. And maybe  
15 it makes sense to have a half hour for you to look at it  
16 instead.

17 MR. BUTLER: Well, let me ask you, Your Honor. It's  
18 12:30 now. I know Your Honor's got some scheduling issues this  
19 afternoon. We have a 3 o'clock chamber's conference which will  
20 last about thirty minutes.

21 THE COURT: Okay.

22 MR. BUTLER: So, I'm wondering -- and I'm just sort  
23 of thinking here. I can't imagine that the -- I want to make  
24 sure that we have a chance to look at your -- and does it make  
25 a sense to --

1 THE COURT: To adjourn for an hour? Maybe. Maybe  
2 that does --

3 MR. BUTLER: And then we can do it. I'm very  
4 confident we can finish the rest of the hearing before the 3  
5 o'clock chambers conference.

6 THE COURT: Okay.

7 MS. SMITH: Your Honor, this is Wendy Smith on the  
8 telephone on item 43 and I've been waiting for two and half  
9 hours on this and I would request that I be able to call back  
10 in.

11 THE COURT: Oh, sure. Absolutely. When we come back  
12 at 1:30 my clerk will hook you in. I don't know if there's  
13 anyone else on the phone that wants that, too.

14 MS. TURNERBAGER: Yes, there is, Your Honor.  
15 Elizabeth Turnerbager for WorldWide.

16 THE COURT: All right. Well, can we just use this  
17 same number?

18 MR. BORNE: And, Your Honor, Howard Borne here as  
19 well.

20 THE COURT: All right. We'll just set up this same  
21 number again the for 1:30.

22 MS. SMITH: Thank you very much.

23 THE COURT: The one thing you may not get and I'm  
24 open to hearing from people about this when you look at the  
25 markup is that with the exception of the debtor's right --

1 subject to 502j to accept claim estimation if they agree -- you  
2 know, for claim estimation purposes as a cap of the amount  
3 stated, I've not made these estimation procedures because they  
4 are really procedures under the contested matter rules. And I  
5 think they work like that. And so, therefore, I don't think  
6 the estate or the parties should be subject to the type of 502j  
7 response that may come in more truncated -- after more  
8 truncated estimations take place.

9 And so I've taken out references to these being  
10 estimations. Everyone's -- you're free to ask for estimation  
11 with different procedures but in my view, as modified, these  
12 procedures satisfy the contested matter requirements of a claim  
13 objection. So I've taken out references to estimation except  
14 for the one that I think -- as long as it's subject to 502j is  
15 kind of a no brainer -- which is that if there is an amount  
16 that you all agree on as a cap, that can be the estimated  
17 amount for various purposes. So that's why I've stricken out  
18 other references to estimation.

19 MR. BUTLER: Well, thank you for the opportunity to  
20 look at that over the lunch hour, Your Honor.

21 THE COURT: Okay. All right. So I'll be back at  
22 1:30.

23 (Recess)

24 THE COURT: Please be seated. Okay. We're back on  
25 the record in Delphi.

1 MR. BUTLER: Your Honor, the next matter on the  
2 agenda is matter number 41, the Debtors' second omnibus claims  
3 objection, at Docket number 5451.

4 Your Honor, in connection with these matters we let  
5 objections to a 602 proofs of claim filed solely on account of  
6 Delphi Corporation common stock. No responses were filed by  
7 the equity holders to those claims. We filed objections to 28  
8 proofs of claim filed solely on account of Delphi Corporation  
9 common stock that were untimely under the bartered order and  
10 again no responses were filed to those objections. We also  
11 filed 28 proofs of claim that were duplicative of the trustee  
12 or agent claims and received one response from a bond holder as  
13 to those matters. And then finally, we filed objections to  
14 approximately 2,195 proofs of claim asserting liquidated claims  
15 of approximately 5.52 billion which we believe to be  
16 duplicative of other proofs of claim or amended as superseded  
17 by later filed claims. We received thirty-six responses by  
18 holders of duplicate or amended claims.

19 As we resolved all of those objections, where we  
20 stand now is, and an order that we'll submit to chambers, with  
21 Your Honor's permission subsequent to the hearing, is we have  
22 agreement to expunge 2,668 claims for something in the  
23 neighborhood of just over 4.1 billion dollars. And the claims  
24 that we've not been able to resolve are approximately 179  
25 claims for about 1.6 billion. Those claims are actually only

1 held by four or five claimants. They're multiple claims by  
2 those claim holders. And under the order, a group of those  
3 claims will be adjourned to the December 13th claims hearing  
4 and several claims will be adjourned to the January 12th claims  
5 hearing. So, as we have indicated to the Court, there was no  
6 intention to have any evidentiary hearings today or to deal  
7 with any substantive objections but we will, at the conclusion  
8 of the hearing, or certainly as soon thereafter as we can get  
9 it over to chambers, we'll submit an order that reflects all  
10 the information that I just provided.

11 THE COURT: And the debtors will send the notice of  
12 judgment under Rule 922 to each claimant specifying its own  
13 claims treatment?

14 MR. BUTLER: Yes, we are.

15 THE COURT: Okay. Each claimant whose claim is  
16 expunged or disallowed or reduced?

17 MR. BUTLER: We'll do that, Your Honor.

18 THE COURT: Okay.

19 MR. BUTLER: All right. So that's -- unless the  
20 Court has any other questions about the second omni, we ask the  
21 Court to expunge the claims --

22 THE COURT: No. I'll grant the relief as modified by  
23 you just now in respect to those claims would have been no  
24 objections or where the objections have been resolved and the  
25 resolutions are reflected in the order.

1 MR. BUTLER: Thank you, Your Honor.

2 Your Honor, the next matter on the agenda, matter  
3 number 42, is our third omnibus claims objection at Docket  
4 number 5452 and this represents -- unlike the first two  
5 objections, this represents some substantive projections now as  
6 opposed to procedural objections. We've objected to claims  
7 with insufficient documentation, claims reflecting  
8 unsubstantiated liability through dollar amounts not  
9 discernible from the debtors' books or records, as well as  
10 claims subject to modification because they were filed in a  
11 foreign currency or overstated or, in the debtors' views, were  
12 incorrectly classified.

13 Of those amounts, Your Honor, as we again sit here  
14 today, with respect to insufficiently documented claims,  
15 approximately -- as well as untimely insufficiently documented  
16 claims, approximately 368 of those claims in the amount of  
17 about 100 million dollars will be expunged with respect to this  
18 matter. And one claim will be adjourned in the amount of about  
19 433,000 dollars.

20 With respect to the next category, which are  
21 unsubstantiated claims or untimely substantiated claims,  
22 approximately 255 claims totaling just over 630 million dollars  
23 will be expunged and 244 claims in the amount of 432 million  
24 dollars will be dealt with pursuant to the claims procedures  
25 motion that we're taking up next assuming Your Honor grants a

1 form of that relief, but they have been adjourned -- at the  
2 moment adjourned without date from this hearing. And the final  
3 group of claims subject to the modification there are thirty-  
4 five of those claims, again, totaling about 100 million dollars  
5 in terms of liquidated damages that have been also adjourned  
6 without date in connection with -- substantive to the  
7 procedures motion that we're about to take up in the next  
8 motion.

9           There are also, I should say, Your Honor, with  
10 respect to claims subject to modification some ninety-seven  
11 claims in the amount of approximately 28.7 million which will  
12 be capped at the cap amount that was in the objection based on  
13 the lack of response or the agreement with the party involved.

14           THE COURT: Cap subject to further right to object or  
15 cap for all purposes?

16           MR. BUTLER: Cap for all purposes at the cap. They  
17 have -- subject to determination to lower the cap.

18           THE COURT: Okay. All right. So, in sum, with  
19 regard to each of these objections, you're seeking relief now  
20 with only respect of those claims where the claimants have not  
21 opposed the relief you sought, right?

22           MR. BUTLER: Or --

23           THE COURT: Or consented to it?

24           MR. BUTLER: Yes, Your Honor.

25           THE COURT: Okay. Which my view is tantamount to the

1 same thing that you served them all and gave them fair notice.  
2 And, again, you'll give each of them an individualized notice  
3 of judgment?

4 MR. BUTLER: Yes, Your Honor.

5 THE COURT: Okay. All right. In light of that and  
6 my review of the motion, I'll approve the objections as  
7 modified on the record.

8 MR. BUTLER: So, Your Honor, we now move then to  
9 matter number 43, which is the claims objection estimation  
10 procedures motion, at Docket number 5453. And assuming Your  
11 Honor is prepared to grant some relief with respect to this  
12 motion, the practical application of this motion will be first  
13 to deal with the 280 or so objections on omni three that have  
14 now been adjourned without date, as well as -- and we'll be  
15 dealing primarily -- focused on those objections. But this  
16 would also apply to future omnis that we'll file. And we are  
17 in the process of preparing, as Your Honor's aware, omni four  
18 and omni five, which are in the process of being prepared and  
19 which we'll address another almost thousand claims as we're  
20 working through those matters.

21 What we've given Your Honor and made available in the  
22 courtroom are a couple of charts with respect to resolved and  
23 unresolved objections. And I can now report to you based on  
24 the work done since we ran through these charts that we have in  
25 fact resolved all objections with all parties and have the --



1 reviewed and have, I believe, the support of the creditors'  
2 committee. We've reviewed the form of order and worked through  
3 it with the creditors' committee with one exception and that is  
4 the objection filed at Docket number 5673, which is the  
5 objection of H.E. Services Company and Robert Backie. And  
6 their objection goes to what's been classified on the charts,  
7 objection charts. So is objection number 2, which is that the  
8 claims hearing procedures do not take into account the  
9 complexity of certain claims and do not contain opt-out  
10 procedures for such claims. And we've indicated how we've  
11 addressed that with the other -- there were five other  
12 objectors who had similar concerns and who've resolved those in  
13 the manner in which we've discussed on the chart which I'll  
14 address in just a moment.

15 Your Honor, during the lunch hour we also had the  
16 opportunity to review some of the comments the Court had made  
17 based on the original order we had submitted prior to  
18 undergoing the negotiation with the seventeen objectors and  
19 with the creditors' committee. And I briefly wanted to mention  
20 what our suggested approach is with respect to this after we --  
21 if Your Honor is prepared to grant relief after he hears from  
22 the objectors and our response to the objectors.

23 And that is just to make the following comments.  
24 First, I think, Your Honor, that the debtors are in accord --  
25 we've spoken with the committee on the lunch hour -- on accord

1 with your view that, as now modified, these procedures for the  
2 most part, because of the modifications, permit the Court to  
3 enter orders with respect to the claims objection on the merits  
4 of the objection and merits of the claim to make an  
5 adjudication as to the claim and don't require estimation, with  
6 the limitation that Your Honor already acknowledged that the  
7 parties agree to a cap that would be an estimation for those  
8 purposes. And so, we'll make appropriate adjustments to the  
9 order that reflect that.

10 The second -- the other three comments, I guess, were  
11 reviewed the order over the course of the -- or four comments  
12 after he reviewed the order over the course of lunch hour is,  
13 first, Your Honor, it made a number of comments throughout the  
14 order that are sort of 9(m) related comments and we have been  
15 able to modify 9(m) to the satisfaction of the creditors'  
16 committee and all of the objectors except the objector at  
17 Docket 5673 -- that objection, the Backie objection. And we  
18 believe that that modification, which we'll ask Your Honor to  
19 consider when we submit the revised order, addresses  
20 substantially all of those kinds of revisions. I do want to  
21 point out to Your Honor that in order to implement 9(m), as we  
22 work between the debtor and the claim holders, that if, in  
23 fact, there are discovery disputes or scheduling disputes that  
24 can't be resolved after meet and confers that we would have the  
25 opportunity to reach out to the Court for -- when the Court has

1 availability to address those two chamber conferences,  
2 telephonic conferences, if that's necessary. We hope it would  
3 not be but it does provide that as an approach.

4           With respect to the staging issue, what happens when  
5 you get as we are today, to a situation where we have many  
6 objections resolved but a couple hundred objections that now  
7 need to be staged, the approach here is to adjourn them without  
8 date and then have them scheduled over some period of time.  
9 Both Your Honor expressed a concern, some of the objectors did  
10 and the creditors' committee said there needs to be some  
11 limitation on the debtors' discretion on how to deal with those  
12 adjourned matters. And what we have worked out with the  
13 creditors' committee, and would ask Your Honor to consider, is  
14 a requirement that those that unless the claim holder otherwise  
15 consents to other treatment, that the hearings would have to be  
16 held within 180 days of the first notice of adjournment. So,  
17 in fact, there would be a clear window during which we'd have  
18 to deal with everything. So there's a finite window but it  
19 does allow us to try to schedule these out and stage them out.  
20 Now, the committee is going to be involved with us on a number  
21 of these issues and trying to deal with all of these claim  
22 holders and trying to settle as many as we can and litigate  
23 others, is a massive undertaking and we need some ability to  
24 stage it within some period of time. So --

25           THE COURT: Okay. As long as you make that subject

1 to the Court's calendar.

2 MR. BUTLER: Yeah, I --

3 THE COURT: So that I don't have 200 hearings on the  
4 180th day.

5 MR. BUTLER: Yeah. We understand what we'll be doing  
6 to ourselves if we try to pull that one off, Your Honor.

7 THE COURT: Okay. Okay.

8 MR. BUTLER: The second -- the last piece of -- the  
9 next comment I want to make had to do with the concept of the  
10 meet and confer and mediation processes. It's the debtors'  
11 view, and joined, I believe, by the creditors' committee, that  
12 it's very important to have both of these processes as  
13 mandatory processes because they serve dual purposes, at least  
14 to meet and confer to us. Meet and confer is both an  
15 opportunity to settle without outside mediation and an  
16 opportunity to sort out all the issues one has to sort out  
17 between the claimant and the company from a litigation  
18 perspective and in order to be able to adjudicate those issues.  
19 And we believe that it shouldn't be in the alternative but that  
20 there should be the meet and confer process and then the  
21 mediation process, if necessary. Our hope is that we'll be  
22 able to knock off a lot of these in the meet and confer  
23 process. But if we can't, we think before we come to the  
24 Court, we should try to do some mediation.

25 THE COURT: Okay. Well, I encourage and am happy to

1 require counsel to meet and confer about the handling of the  
2 litigation and I certainly have authority to direct that. And  
3 I'll do that. The reason I truncated it was I thought you were  
4 really focusing on a settlement conference only as opposed to  
5 counsel's obligation to meet and confer. And, secondly,  
6 because I had some concern which now I think you've alleviated,  
7 that if you had both, you were not going to have sufficient  
8 time to really adequately brief it and take discovery and try  
9 it. But if you have that degree of time and you have  
10 flexibility on where you're having that meet and confer or how  
11 you're doing it, then I'm okay having both.

12 MR. BUTLER: Thank you, Your Honor. And the last  
13 piece of it, I just want to mention just in terms of -- we did  
14 examine the other aspects of the markup, Your Honor, and while  
15 we made some adjustments, we haven't adjusted every -- for  
16 every comment Your Honor made because in many respects, those  
17 comments were treated in another way with the objectors. And  
18 so our thought is, if it's acceptable to the Court after you  
19 hear the objections, or the one objection and we deal with  
20 that, is that we would work with the creditors' committee and  
21 submit a joint markup to you of what we think is appropriate  
22 that would be consistent to what we promised all the sixteen  
23 objectors we've settled with. And then, if Your Honor, in  
24 reading that, thinks we haven't done justice to a particular  
25 issue that Your Honor particularly wants to take care of, we do

1 have the experience in this case that Your Honor is prepared --  
2 will make whatever changes in the order that you think is  
3 appropriate.

4 THE COURT: I -- as I said, I reviewed the order that  
5 you submitted this morning and you had, in almost all respects  
6 except a couple of the ones we've already talked about, covered  
7 the same issues that I covered. The one that I think we ought  
8 to air now just in case you disagree on it is, it seemed to me  
9 that -- but I'm willing to hear other parties' views on this,  
10 that if you require someone with settlement authority to attend  
11 the hearing that you are going to somewhat vitiate the effect  
12 of the mediation because people will think that this is a third  
13 opportunity to settle. And my view is that they should,  
14 particularly if you're going to have an initial conference  
15 before that, they should know that they're going into that  
16 meeting and that in all likelihood this'll get presented for a  
17 hearing and I'll rule from the bench and there will be a winner  
18 and a loser and it's too late. They should really focus on the  
19 mediation and get it done.

20 MR. BUTLER: I happen to think that's a legitimate  
21 perspective. I mean, we --

22 MR. ROSENBERG: Your Honor, that was our perspective.

23 THE COURT: All right.

24 MR. BUTLER: The reason we had wanted it is we are  
25 all aware of the fact that there are people, a great number of

1     them, who choose to settle on the courthouse steps or out in  
2     the hallway when we're talking.

3             THE COURT: Well, they're always free to come.  
4     They're always free to come but I don't want to give them any  
5     impression that you all are under some sort of obligation to  
6     listen to them at that point. So --

7             MR. BUTLER: I think it's fair enough. All right.  
8     So, Your Honor, with that in mind, I think the only objection  
9     that still stands is the objection of H.E. Services Company and  
10    Robert Backie and I think counsel is on the phone for that.

11            THE COURT: Okay.

12            MR. MASTROMARCO: Yes, Your Honor. Victor  
13    Mastromarco on behalf of Backie and H.E. Services. Because I  
14    haven't seen what the new marked up proposed order or the  
15    modifications to that order, I really don't know at this point  
16    what they're proposing to change. But if I may indicate -- I  
17    guess, my focus -- what my objection is, it is more towards the  
18    fact that I don't see that the order -- in my case, as an  
19    example, the complaint which was removed and that the stay was  
20    entered under, there's three different issues that are separate  
21    that are being marked up that the claims are on and they're  
22    very complex claims. I don't see any flexibility in the order  
23    that would permit the parties to seek an amendment or an  
24    expansion of discovery based on the complexity of their various  
25    cases.

1 THE COURT: Okay. I think that it -- that is in here  
2 now. I had put it in and the debtors have also. Let me read  
3 to you what they've proposed. "Should the parties be unable to  
4 agree on reasonable modifications to these claim hearing  
5 procedures, if any, either party may request that the Court  
6 promptly schedule a teleconference to consider such proposed  
7 modifications. No discovery, testimony or motion practice  
8 other than that described herein as modified shall be permitted  
9 unless otherwise agreed by the parties or ordered by the  
10 Court."

11 MR. MASTROMARCO: So that permits us to seek some  
12 sort of review by you --

13 THE COURT: Right. It --

14 MR. MASTROMARCO: -- if we can't reach -- and

15 THE COURT: And relatively early in the process. I  
16 mean, you're going to have your attorneys meet and confer and I  
17 will be there, too, but the attorneys can focus on those issues  
18 early on, decide if this does require a separate process and  
19 then if you disagree about that, you can call the Court or --  
20 obviously with the other counsel, opposing counsel, and air the  
21 issue with me.

22 MR. MASTROMARCO: We --

23 THE COURT: And then, secondly, there is an ability  
24 throughout, if something comes up, in addition to that initial  
25 right, to say, well, you know, let's be reasonable here.



1 Let's -- you know, we ought to expand this in the following  
2 way. So, I think it's covered.

3 MR. MASTROMARCO: Okay. Well, then that basically  
4 eliminates our objection on that. The only other question I  
5 had, Your Honor, was regarding the estimation process and what  
6 the order says regarding that, if that's been modified at all  
7 or what the --

8 THE COURT: Well, yes. Except for Paragraph 10(k)  
9 which was the cap, the debtors are agreeing with the highest  
10 dollar amount set forth in the claim as a cap for estimation  
11 purposes and are subject to Section 502(j) although I think  
12 that's implicit anyway in estimation. There are really no  
13 references to estimation procedures in here. The debtors or  
14 others can seek estimation in appropriate instances but these  
15 apply -- these procedures, with that one exception -- these  
16 procedures apply to claim objections and that's so that there's  
17 a different burden, if you will, depending on my ruling as to  
18 who wants to seek reconsideration under 502(j) which I think is  
19 a much higher standard when you've ruled on a claim objection  
20 as opposed to a claim estimation.

21 MR. MASTROMARCO: Well, thank you, Your Honor. That  
22 basically takes care of any questions or objections I had.

23 THE COURT: Okay.

24 MR. BUTLER: Your Honor, I have four things I need to  
25 read into the record which I committed to do -- we committed to

1 do in connection with this, and then, I guess, the creditors'  
2 committee wants to comment. First, in connection with our  
3 discussions with the creditors' committee, we have agreed that  
4 the debtors will include language in each future personalized  
5 notice of claims objection clearly identifying that the  
6 objection is subject to the claims hearing procedures, that the  
7 hearing on any responses thereto will automatically be  
8 adjourned from the omnibus hearing date to a future off omnibus  
9 date to be set pursuant to the claims hearing procedures.

10 THE COURT: And do you give them a copy of the  
11 procedures?

12 MR. BUTLER: Yes, we will.

13 THE COURT: Okay.

14 MR. BUTLER: Second, with respect to Electronic Data  
15 Systems Corp. and their affiliates at Docket number 5724, we  
16 have confirmed that we will not assert -- the debtors will not  
17 assert that the response of EDS, which includes three EDS  
18 affiliates listed in the response to the second and third  
19 omnibus objections does not comply with the response minimum  
20 requirements contained in the objections and the procedures  
21 order. We will agree that -- the debtors and EDS have agreed  
22 that EDS' principal place of business for purposes of the order  
23 is in Plano, Texas. The debtors fully understand and confirm  
24 that EDS has fully preserved its right to seek modifications to  
25 the procedures with respect to its claims following any meet

1 and confer if the parties cannot agree on EDS' requested  
2 modification and that in seeking such modifications, EDS shall  
3 retain whatever rights it now has to argue the application of  
4 the unmodified procedures to the specific facts and  
5 circumstances of EDS' claims would violate EDS' rights and  
6 otherwise would be unsupported solely with respect to EDS'  
7 claims under FRBP and other applicable law and the debtors  
8 reserve the rights to contest the same.

9 With respect to Miliken and Company, objection  
10 docketed at 5640, we've agreed to provide Miliken with certain  
11 information in writing in advance of a notice of a sufficiency  
12 hearing with respect to claims number 11643 and 11644, if any.

13 And then, finally, with respect to Inplay at Docket  
14 number 5602, we've agreed that Inplay Technologies, the holder  
15 of claim 2558, has agreed to withdraw its objection to claim  
16 hearing procedures based upon our agreement to have a claim  
17 objection hearing in respect of claim 2558 not later than  
18 February 14, 2007 and notwithstanding the provisions of the  
19 claim procedures order, the debtors agree that Inplay  
20 Technologies shall be deemed one of the excluded parties as  
21 defined in Paragraph 10 of the claims hearing procedures order  
22 if the claim objection hearing in respect to claim 2558 is not  
23 concluded by March 1, 2007, which is another claims hearing  
24 date that's already on the docket. So it gives us a couple of  
25 hearings to deal with those issues.

1 I believe I've stated all of the matters that needed  
2 to be stated on the record and I think the creditors' committee  
3 wanted to address and then there may be anyone else who wants  
4 to address the Court.

5 THE COURT: Well, let me -- just procedurally then.  
6 You're going to submit an order tomorrow or Monday?

7 MR. BUTLER: Yes.

8 THE COURT: And you're going to copy in the objectors  
9 on that?

10 MR. BUTLER: Well, we've already gone over all of  
11 that with the objectors.

12 THE COURT: You've already gone over it? Okay.

13 MR. BUTLER: Our intention -- what will happen is on  
14 courtesy. We had not intended to settle on this -- submit to  
15 Your Honor --

16 THE COURT: No, I don't want you to settle it. If  
17 you've gone over it with them, I don't have a problem with  
18 that.

19 MR. BUTLER: They have what was attached to our  
20 response which addressed sixteen of the seventeen objections.

21 THE COURT: Okay.

22 MR. BUTLER: And then we got the creditors'  
23 committee. I don't know of any objections -- if you want to  
24 address the Court that I have not handled appropriately.

25 MR. BROUDE: Good afternoon, Your Honor. Mark

1 Broude, Latham & Watkins for the creditors' committee. Just  
2 very briefly, Mr. Butler has described the modifications to  
3 Paragraph 9(m) that are in the revised order. When we first  
4 got the original order, we were concerned as were many people,  
5 as to the one-size-fits-all nature of the process that was  
6 being proposed and 9(m) is the answer to that. That's, as Your  
7 Honor has noted, the way for claimants to modify the procedures  
8 to fit the particulars of the situation. The importance of  
9 that in these processes cannot be underplayed and as a result,  
10 we have requested and the debtors have agreed in their modified  
11 notices that the rights under 9(m) be prominently displayed in  
12 the notices that get sent out scheduling the hearings so that  
13 all claimants are aware of their rights and since it's on, I  
14 think, the tenth page of a fifteen page order, they know that  
15 it's there without having to read through fifteen pages of  
16 single-spaced text.

17 THE COURT: All right. I guess the one thing I  
18 should -- you should emphasize because this is a process is  
19 that if they're going to seek modification they should do it  
20 within a suitable time. I don't think you have to be as vague  
21 as that but they should be on some notice that if they're  
22 seeking a modification to something at the last minute, I may  
23 say, well, that's not fair.

24 MR. BROUDE: I think the way it's set up, Your Honor,  
25 is that the intention, and I think it may even be explicit in

1 the order is that the -- what I'll call the 9(m) issues are  
2 supposed to be raised at the meet and confer. The meet and  
3 confer is scheduled to occur no later than, I think, ten  
4 business days after the start of the process.

5 THE COURT: Okay.

6 MR. BROUDE: So they can discuss all discovery and  
7 evidentiary issues up front.

8 THE COURT: And then they'll raise that with the  
9 Court shortly after that?

10 MR. BROUDE: Exactly, Your Honor.

11 THE COURT: Okay.

12 MS. ROGERSH: Your Honor, Elizabeth Rogersh for  
13 Worldwide Battery Company. I do have a question regarding case  
14 management whenever it's appropriate.

15 THE COURT: That's now.

16 MS. ROGERSH: Okay. Thank you.

17 THE COURT: Okay.

18 MS. ROGERSH: I represent a claimant whose claim is  
19 identified in full in the agenda for today's hearing as a  
20 response that was filed after the November 24, 2006 objection  
21 deadline. Now, our objection was attempted to be delivered to  
22 the clerk's office on the morning of the 24th and that delivery  
23 could not be completed because of a holiday.

24 THE COURT: Well, let me just ask the debtors. Is  
25 this creditor's claim included in the order expunging claims or

1 is it excluded?

2 MR. BUTLER: No, it's not. It was excluded. It's  
3 been adjourned -- it's scheduled for adjournment subject to our  
4 rights to assert that it's not timely filed.

5 THE COURT: All right. So your claim -- I don't know  
6 if -- did you hear that, Ma'am?

7 MS. ROGERSH: I did. Thank you. I just wanted to  
8 clarify that it was among the adjourned claims.

9 THE COURT: All right. And the debtors are  
10 preserving their rights to say that it's untimely and you have  
11 all your rights to say excusable neglect or no harm no foul or  
12 whatever.

13 MS. ROGERSH: Understood, Your Honor.

14 THE COURT: Okay. Okay. All right. So I'll look  
15 for that order then. All right. As Mr. Butler said, there's  
16 only one more matter on the calendar?

17 MR. BUTLER: That's right.

18 THE COURT: So that matter -- oh, I'm sorry --

19 MR. KLEND: I'm sorry, Your Honor. Briefly, Steven  
20 Klenda on behalf of NuTechs Plastic Engineering which is  
21 similar. According to the Court, NuTech has resolved its  
22 objection with the understanding for modifications to occur  
23 around 9DOD order that said the estimation procedures applied  
24 to creditors' estimation whose claims are subject to estimation  
25 will preserve NuTechs' right and are appropriate to argue that

1 the estimation procedure should not apply in the particular  
2 circumstances of NuTechs' case having --

3 THE COURT: But there's -- again, except for the cap  
4 point, if your claim says it's -- you're asserting a claim of -  
5 - I'll just pick a number, ten million dollars and the debtors  
6 believe that they can live for voting and reserve and perhaps  
7 even distribution purposes with a claim of ten million dollars,  
8 that's the only estimation provision left in this order.  
9 Everything else is governed by the claim objection/contested  
10 matter rules.

11 MR. KLEND: Thank you for the clarification, Your  
12 Honor.

13 THE COURT: Okay.

14 MR. ZALMANOWITZ: Your Honor, Menachem Zelmanovitz,  
15 Morgan Lewis on behalf of Hitache Chemical. Our claim -- I  
16 believe our objection has been resolved but there have been  
17 additional changes to proposed orders since we discussed it  
18 with counsel. Just to be on the safe side, we would like to  
19 get a copy of that when circulated to committee counsel as  
20 well.

21 THE COURT: Okay. That's fine. I'm not expecting  
22 objections, though, unless something's really out of left  
23 field. Okay. All right. I think the record reflects the type  
24 of relief that I'm going to grant here and I'll look to see the  
25 order and if it's consistent with that, I'll sign it.



1 MR. BUTLER: Thank you, Your Honor. Your Honor,  
2 you're right. The last matter on the agenda is a matter  
3 involving an individual employee of the company and we ask the  
4 courtroom be cleared except for the statutory committees that  
5 choose to stay and the USW and the debtors.

6 THE COURT: Okay. All right. So we're going to hang  
7 up on the conference call as well then.

8 (Proceedings concluded)

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C E R T I F I C A T I O N

I, Esther Accardi, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

\_\_\_\_\_  
Signature of Transcriber

December 1, 2006\_\_\_\_\_  
Date

Esther Accardi\_\_\_\_\_  
typed or printed name

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